



Court of Bosnia and Herzegovina

Case Number: S1 1 K 003485 07 Kri

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Before the Panel composed of: Judge Davorin Jukić, Panel President
Judge Darko Samardžić
Judge Patricia Ann Whalen

CASE OF PROSECUTOR'S OFFICE OF BOSNIA AND HERZEGOVINA

v.

Nisvet Gasal et al.

VERDICT

Prosecutor of the Prosecutor's Office of Bosnia and Herzegovina:

Slavica Terzić

Defense Counsel for the Accused Nisvet Gasal:

Senad Kreho

Mirza Kovač

Defense Counsel for the Accused Musajb Kukavica:

Fadil Abaz

Idriz Kamenica

Defense Counsel for the Accused Senad Dautović:

Refik Serdarević

Senad Dupovac

Sud Bosne i Hercegovine, Sarajevo, ul. Kraljice Jelene br. 88

Telefon: 033 707 100, 707 596; Fax: 033 707 225

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IN THE NAME OF BOSNIA AND HERZEGOVINA!

The Court of Bosnia and Herzegovina, in the Panel composed of Judge Davorin Jukić as the Panel President and Judge Darko Samardžić and Judge Patricia Ann Whalen as the Panel members, with the participation of legal associate Igor Dubak as the Record-taker, in the criminal case against the Accused Nisvet Gasal et al. charged with the criminal offense of War Crimes against Civilians under Article 173(1) a), c), e) and f), War Crimes against the Wounded and Sick under Article 174(1) a) and b), War Crimes against Prisoners of War under Article 175(1) a) and b), as read with Article 180(1) and (2) and Article 29 of the Criminal Code of BiH, acting upon the Indictment of the Prosecutor's Office of Bosnia and Herzegovina number KT-RZ-125/07 of 17 September 2007, which was confirmed on 19 September 2007, and the Indictment KT-RZ- 162/05 of 7 December 2007, which was confirmed on 11 December 2007 and amended on 29 June 2011, following the completion of the main trial, in presence of the Accused Nisvet Gasal, Musajb Kukavica and Senad Dautović and their Defense Counsel Senad Kreho, Mirza Kovač, Fadil Abaz, Idriz Kamenica, Refik Serdarević and Senad Dupovac, as well as the Prosecutor of the Prosecutor's Office of Bosnia and Herzegovina Slavica Terzić, on 22 November 2011 rendered and publicly pronounced the following:

VERDICT

ACCUSED:

SENAD DAUTOVIĆ, son of Salih and Hadžija nee Mustajbašić, born on 23 July 1963 in Prusac, Donji Vakuf municipality, with permanent residence in ..., Personal Identification Number ..., ... by ethnicity, citizen of ..., literate, teacher of National Defense by occupation, university education, married, father of two children, did military service in Negotin in 1981, registered in military records of the Ministry of Defense-Department of Defense of Bugojno, no prior conviction,

NISVET GASAL, a.k.a. "Nisko", son of Fazlo and Tenzila nee Terzić, born on 25 May 1964 in the village of Oborci, Donji Vakuf municipality, residing in ..., Personal Identification Number ..., a criminal investigator by occupation, completed two-year post-secondary school, literate, ... by ethnicity, citizen of ..., married, no prior conviction,

Pursuant to Article 285(1) of the Criminal Procedure Code of Bosnia and Herzegovina (CPC of BiH),

ARE GUILTY

Because:

During the war in Bosnia and Herzegovina, and at the time of the armed conflict between the Croat Defense Council (“HVO”) and the Army of the Republic of Bosnia and Herzegovina (“ARBiH”), in Bugojno, in the period from about 18 July 1993 until 19 March 1994, the Accused **Nisvet Gasal** at the Football Club /FC/ *Iskra* Stadium Camp in Bugojno, and the Accused **Senad Dautović** at the Football Club *Iskra* Stadium Camp in Bugojno, on the premises of the Gymnasium /High School/ in Bugojno, Health Centre – Bugojno War Hospital, premises of the Public Security Station /SJB/ Bugojno and at other locations, the Accused **Nisvet Gasal** in his capacity as the Camp Warden of the FC *Iskra* Stadium from 22 September 1993 until 19 March 1994, and the Accused **Senad Dautović**, in the period from 18 July 1993 until 27 July 1993, as one of the commanders of the Unified Command of the Army of the Republic of Bosnia and Herzegovina Bugojno – Command of the Bugojno Town, which was established contrary to the rules of military organization in the Army of RBiH, and which consisted of the 307th Brigade of the Army of RBiH, SJB Bugojno /Bugojno Public Security Station/ and the Bugojno Defense Staff, during which time he was also the Chief of the Bugojno Public Security Station, by the nature of which position he was a member of the Bugojno Municipality Wartime Presidency, and from 27 July 1993 until 13 November 1993 as the Chief of the SJB Bugojno, by the nature of which position he was at the same time a member of the Bugojno Municipality Wartime Presidency, and from 13 November 1993 until 19 March 1994 as the Assistant Commander for Security of the Operations Group West of the Army of RBiH, acted contrary to the rules of international humanitarian law and in doing so they violated common Article 3(1) a) of the Geneva Conventions relative to the Protection of Civilian Persons in Time of War of 12 August 1949, in the way that **Nisvet Gasal**, (1), aided and abetted in the execution of the criminal offence reflected in an inhumane treatment of detainees of Croat ethnicity in the FC *Iskra* Stadium Camp who were deprived of their liberty, he aided and abetted in the taking of detainees to perform forced labor by failing to protest against orders of the military authorities to take detainees out to perform forced labor although he knew and was aware such acts were prohibited and unlawful,

and failed to object to the prohibited taking of detainees for forced labor at the frontlines, with the purpose of consolidating positions of the Army of RBiH, and failed to draw attention of other senior officers of the Army of RBiH and civilian authorities of the Bugojno municipality that such acts were prohibited and unlawful, and, (2), he bears responsibility for the inhuman treatment committed by his subordinates, who he had effective control over, as he failed to take reasonable and necessary measures to prevent the beatings and abuse of detainees in the Camp under his control and to identify or punish the perpetrators subordinated to him; while **Senad Dautović** participated in two separate joint criminal enterprises involving a plurality of persons, the Bugojno Municipality Wartime Presidency, with Dževad Mlačo as the Chairman, in the work of which senior military officers of the Army of RBiH also participated, as follows: Bugojno Defense Staff, 307th Brigade of the Army of RBiH and Operations Group West of the Army of RBiH, whose aim was that the selected group of detainees of Croat ethnicity (hereinafter: persons of Croat ethnicity), including persons of Croat ethnicity who laid down their arms and surrendered to the members of the Army of RBiH, Bugojno Defense Staff and Bugojno SJB, which at the time and contrary to the rules of military organization in the Army of RBiH belonged to the Unified Command of the Army of the Republic of Bosnia and Herzegovina Bugojno–Command of the Bugojno Town, be deprived of liberty during the conflict and for these persons, particularly those considered extremists, to be murdered, and he participated with the same plurality of persons in a plan of forced blood donation performed in an inhuman and cruel manner, **Senad Dautović** knowingly and with intent significantly contributed to the execution of the common purpose of the joint criminal enterprise of which he was aware because he, through his acts and failure to act, participated in the perpetration of the criminal offences of murder and inhuman treatment, and for the premises of the Gymnasium and SJB Bugojno where he bears responsibility as the Chief of the SJB Bugojno, he failed to take reasonable and necessary measures to prevent acts of abuse and torture including identifying and punishing his subordinates who perpetrated the crime of inhuman treatment and as the Chief of the SJB Bugojno he bears responsibility for detaining a large number of detainees in too small of premises in the SJB Bugojno and for the inadequate conditions in the Gymnasium; thus the Accused Nisvet Gasal and Senad Dautović during the referenced period of time committed the following:

SENAD DAUTOVIĆ:

Section 1 (Count 10 b) and c) of the Amended Indictment)

In the period from 22 July 1993, Senad Dautović as one of the commanders of the Unified Command of the Army of the Republic of Bosnia and Herzegovina Bugojno – Command of the Bugojno Town, which was established contrary to the rules of military organization in the Army of RBiH, and which consisted of the 307th Brigade of the Army of RBiH, SJB Bugojno /Bugojno Public Security Station/ and the Bugojno Defense Staff until 27 July 1993, during which time he was also the Chief of SJB Bugojno, by the nature of which position he was a member of the Bugojno Municipality Wartime Presidency until 13 November 1993, and from this period onwards in his capacity as the Assistant Commander for Security in the “OG West”, consciously and willingly participated in the joint criminal enterprise of the Bugojno Municipality Wartime Presidency, whose president was Dževad Mlaćo, the purpose and plan of which was to single out persons believed to be extremists among the detained persons of Croat ethnicity and kill them, whereupon persons of Croat ethnicity Niko Džaja, Mihovil Strujić, Jadranko Gvozden, Željko Miloš, Frano Jezidžić and Stipica Zelić were taken from Prusac for interrogation at the BH Bank in Bugojno, where the Military Police of the 307th Brigade of the Army of RBiH was stationed and where they were abused by members of the military police who punched and kicked them and beat them with blunt objects all over their bodies, as a result of which Jadranko Gvozden succumbed to the injuries sustained during the abuse at the BH Bank, after which time they were taken in an unknown direction whence all trace of them has been lost, except for Željko Miloš who managed to escape, whereas Miroslav Dilber, Ante Markulj, Dragan Erkapić, Dragan Miličević, Ivo Miloš, Perica Kovačević, Zoro Galić, Zdravko Juričić, Niko Zlatunić, Nikica (son of Dragutin) Miloš, Perica Crnjak and Branko Crnjak, who were taken to the BH Bank from the *Iskra* camp never returned to the camp, while Nikica (son of Jozo) Miloš a.k.a. Kardelj was captured at an unknown location and taken to the BH Bank after which time all trace of him is lost, whereby **Dautović Senad**, as a member of the joint criminal enterprise, significantly contributed by his acts and failure to act to the execution of the common plan to commit the criminal offence of murder.

Section 2 (Counts 5c, 8b and 9h of the Amended Indictment)

a) In the period from 24 July 1993 until approximately mid-August 1993, after the shortage of blood supply was discussed at the sessions of the Bugojno Municipality Wartime Presidency, which were either attended by **Senad Dautović** or of which he was informed, and after it was decided to secure the needed blood supply, armed members of the Army of RBiH, Bugojno Defense Staff and SJB Bugojno, took out of the basement of the *Slavonija Di* Furniture Showroom located in the immediate vicinity of the Bugojno SJB the detained persons of Croat ethnicity, among them persons to whom **Senad Dautović** guaranteed their safety and treatment in accordance with the rules of international humanitarian law and who had surrendered to **Senad Dautović**, and took them to the Bugojno Health Center where the Wartime Hospital was located opposite the Bugojno SJB and for whose security the Bugojno SJB was responsible, where the nurses drew blood from the unwilling detainees for the needs of the Wartime Hospital thus inflicting serious mental or physical suffering on the detainees whereupon the detainees were taken back to the Furniture Showroom and detained, while **the Accused Senad Dautović**, as one of the commanders of the Unified Command of the Army of RBiH Bugojno - Defense of the Bugojno Town and Chief of SJB Bugojno, by the nature of which position he was a member of the Bugojno Municipality Wartime Presidency, knowingly and with the intention of executing the common purpose and plan of the joint criminal enterprise which he joined, knew that the detainees in the Furniture Salon were forced to donate blood in the manner described above, with his participation in the joint criminal enterprise by his acts and failure to act, he significantly contributed to this joint criminal enterprise.

b) In the period from 19 July 1993 until 25 August 1993, and after the shortage of blood supply was discussed at the sessions of the Bugojno Municipality Wartime Presidency, which were either attended by **Senad Dautović** or of which he was informed, and after it was decided to secure the needed blood supply, armed members of the Army of RBiH, Bugojno Defense Staff and SJB Bugojno took out of the basement of the Bugojno SJB the detained persons of Croat ethnicity, including Kazimir Kaić, Zlatko Sušilović, Tomislav Turalija, Ivica Pavlović and other detainees, and took them under escort to the Bugojno Health Center where the Wartime Hospital was located opposite the Bugojno SJB and for whose security Bugojno SJB was responsible, where the nurses drew blood from the unwilling detainees for the needs of the Wartime Hospital thus inflicting serious mental or physical suffering on them whereupon the detainees were taken back to the premises of

the Bugojno SJB and detained there, while **the Accused Senad Dautović**, as one of the commanders of the Unified Command of the Army of RBiH Bugojno - Defense of the Bugojno town and Chief of SJB Bugojno, by the nature of which position he was a member of the Bugojno Municipality Wartime Presidency, knowingly and with the intention of executing the common purpose and plan of the joint criminal enterprise which he joined, knew that the detainees in the SJB Bugojno were forced to donate blood in the manner described above, with his participation in the joint criminal enterprise by his acts and failure to act, he significantly contributed to this joint criminal enterprise.

c) In the period from 18 July 1993 until approximately mid-September 1993, after the shortage of blood supply was discussed at the sessions of the Bugojno Municipality Wartime Presidency, which were either attended by **Senad Dautović** or of which he was informed, and after it was decided to secure the needed blood supply, armed members of the Army of RBiH, Bugojno Defense Staff and SJB Bugojno, started taking out from the inadequate basement premises of SJB Bugojno detained persons of Croat ethnicity, among them Zoran Gvozden and other detainees, whereupon they took them to the Health Center in Bugojno, which was also home to the Bugojno War Hospital at the time and which is located right across the street from the SJB Bugojno, where they subjected the detainees to cruel and inhuman treatment by forcing them to donate blood for the wounded members of the Army of RBiH Bugojno, SJB Bugojno and Bugojno Defense Staff, with the nurses taking blood against their will, after which the detainees were taken back to the basement of the Police Station Centar Bugojno in the Gymnasium and detained there, while **Senad Dautović**, as one of the commanders of the Unified Command of the Army of RBiH Bugojno - Defense of the Bugojno town and Chief of SJB Bugojno, by the nature of which position he was a member of the Bugojno Municipality Wartime Presidency, knowingly and with the intention of executing the common purpose and plan of the joint criminal enterprise which he joined, knew that the detainees at the Police Station Centar Bugojno were forced to donate blood in the manner described above, with his participation in the joint criminal enterprise by his acts and failure to act, he significantly contributed to this joint criminal enterprise.

Section 3 (Count 8a of the Amended Indictment)

In the period between 19 July 1993 and 25 August 1993, **Senad Dautović** allowed that members of the Bugojno SJB detain and keep detained on the premises of the Bugojno SJB, in the holding cells in the basement of the Bugojno SJB, male persons of Croat ethnicity who surrendered to members of the Bugojno SJB, among them: Kazimir Kaić, Zlatko Sušilović, Tomislav Turalija, Ivica Pavlović and other detainees who were detained on too small premises, only to escort them to the Gymnasium in Bugojno where the Police Station Centar of the Public Security Station Bugojno was quartered and detained them in the basement of the Gymnasium where a large number of persons of Croat ethnicity had already been detained, while **Senad Dautović**, as the Chief of SJB Bugojno, by the nature of which position he was a member of the Bugojno Municipality Wartime Presidency, allowed the detention of those persons on the premises of the Bugojno SJB although he knew the premises were inadequate for such a large number of detainees.

Section 4 (Count 9 a), b), c), d), e), f) and j) of the Amended Indictment)

a) During the period from 19 July 1993 until about 8 October 1993, **Senad Dautović** allowed members of the Police Station Centar of the Bugojno Public Security Station, which was based in the Gymnasium building in Bugojno, and Bugojno SJB, to detain and keep detained in the inadequate and small basement, in the gym of the Gymnasium building and on other premises of the Gymnasium persons of Croat ethnicity, a total of up to 100 detainees, who did not have enough food, water, light, ventilation, free access to toilets and who were deprived of the possibility to maintain personal hygiene, and approximately on 8 October 1993 all detainees who were on the premises at the time were transferred to the FC *Iskra* Stadium camp in Bugojno, while **Senad Dautović**, as the Chief of SJB Bugojno, allowed the detention of those persons on the premises of the Police Station Centar of the Bugojno SJB although he knew the premises were inadequate for such a large number of detainees and that basic conditions were not provided for the stay of detainees on those premises.

b) During the latter half of July 1993, on approximately 23 July 1993, members of the Police Station Centar - Bugojno SJB and other members of the Bugojno SJB, including the Deputy of the Commander of the Police Station Centar Besim Hodžić a.k.a Besko, Nijaz Bevrnja whose direct superior at that point in time was **Senad Dautović**, formed a gauntlet

in the hall of the Gymnasium in such a way that they lined up on both sides at the entrance into the Gymnasium building to the entrance into the basement of the Gymnasium, leaving a passage in between, and ordered Gordan Raić to start walking through the passage, which Gordan Raić did. Then they started kicking Gordan Raić, punching him, striking him with rifle butts and with different objects all over his body, thus inflicting serious physical and mental suffering and injury on him. Due to those blows Gordan Raić kept falling down on the ground, but they ordered Gordan Raić to stand up and move on towards the basement, which Gordan Raić did, and in doing so they continued striking Gordan Raić, and at one moment, due to the great number of blows received, he lost his consciousness, but they recovered Gordan Raić and pushed him down the stairs into the basement of the Gymnasium, and thus they detained Gordan Raić with visible injuries all over his body with the other detainees of Croat ethnicity who had already been detained there, while **Senad Dautović**, as the Chief of SJB Bugojno, had reason to know that the detainees were abused in the referenced manner when brought to the premises of the Police Station Centar Bugojno in the Gymnasium building in Bugojno, and is responsible by his failure to act, that is, by failing to undertake reasonable and necessary measures to prevent the abuse of detainees in the manner described above or punish those who abused them and who were at the time subordinated to him over whom he had effective control.

c) During the same period and in the same place as in the previous section, members of the Police Station Centar - Bugojno SJB and other members of the Bugojno SJB, whose direct superior at that point in time was **Senad Dautović**, took Gordan Raić out of the basement where he was detained and brought him to the gym of the Gymnasium where several members of the Police Station Centar kicked Gordan Raić, punched him, and hit him with billiard cues all over his body. Due to those blows, Gordan Raić kept falling on the floor and thus sustained serious physical and mental suffering and injury; thereupon, they poured petrol on Gordan Raić and wanted to set him on fire, in which manner they inflicted on him serious mental pain and suffering. Thereafter, they detained Gordan Raić with visible injuries all over his body in the basement of the Gymnasium, while **Senad Dautović**, as the Chief of SJB Bugojno, had reason to know that the detainees at the Police Station Centar Bugojno in the Gymnasium in Bugojno were abused, and is responsible by his failure to act, that is, by failing to undertake reasonable and necessary measures to prevent the abuse of detainees, which he was obliged to do by the nature of the position he held, and by failing to undertake reasonable and necessary measures to

prevent the abuse of detainees in the manner described above or punish those who abused them and who were at the time subordinated to him and over whom he had effective control.

d) On 23 July 1993, members of the Police Station Centar - Bugojno SJB and other members of the Bugojno SJB, formed a gauntlet in the hall of the Gymnasium in such a way that they lined up on both sides of the entrance into the Gymnasium building to the entrance into the Gymnasium basement, leaving a passage in between. They ordered the civilian - witness **B** to start moving through that passage, which the witness **B** did. Then they started kicking witness **B**, punching him, striking him with rifle butts and different objects all over his body, and due to those blows witness **B**'s right clavicle broke and his right kidney was injured, in which manner they inflicted upon witness **B** serious mental and physical suffering and injury. Thereupon, they pushed witness **B** down the stairs into the Gymnasium basement and thus detained witness **B** with the other detainees of Croat ethnicity who had already been detained there, while **Senad Dautović**, as the Chief of SJB Bugojno, had reason to know that the detainees were abused in the referenced manner when brought to the premises of the Police Station Centar Bugojno in the Gymnasium building in Bugojno, and is responsible by his failure to act, that is, by failing to undertake reasonable and necessary measures to prevent the abuse of detainees when they were apprehended, which he was obliged to do by the nature of the position he held, and by failing to undertake reasonable and necessary measures to prevent the abuse of detainees in the manner described above or punish those who abused them and who were at the time subordinated to him and over whom he had effective control.

e) In late July 1993, after 18 July 1993, members of the Police Station Centar - SJB Bugojno and other members of the SJB Bugojno locked up Stjepan Cvijanović in the basement of the Police Station Centar at the Gymnasium in Bugojno, and on that same day members of the SJB Bugojno wearing hoods on their heads came down to the basement where Stjepan Cvijanović was detained and beat him, which caused him to faint thus inflicting on him serious mental and physical suffering and injury, and regain his consciousness only the next day in the hospital bed of the Health Center in Bugojno, which is across the street from SJB Bugojno, while **Senad Dautović**, as the Chief of SJB Bugojno, had reason to know that the detainees were abused in the referenced manner when brought to the premises of the Police Station Centar Bugojno in the Gymnasium

building in Bugojno, and is responsible by his failure to act, that is, by failing to undertake reasonable and necessary measures to prevent the abuse of detainees when they were apprehended, which he was obliged to do by the nature of the position he held, and by failing to undertake reasonable and necessary measures to prevent the abuse of detainees in the manner described above or punish those who abused them and who were at the time subordinated to him and over whom he had effective control.

f) In the period from 18 July 1993 until 8 October 1993, members of the Police Station Centar - SJB Bugojno and other members of the SJB Bugojno were taking the detainees of Croat ethnicity, who were detained on the premises of the Police Station Centar in the Gymnasium in Bugojno upon the approval of **Senad Dautović**, to the ground floor or other places in the Gymnasium where they punched and kicked them, beat them with clubs and other objects all over their bodies, as a result of which the detainees sustained visible injuries which caused them serious mental and physical suffering, with the following detainees beaten in this way: Josip Škaro, Mario Subašić, Vinko Ivković, Mijo Marijanović and other detainees, while **Senad Dautović**, as the Chief of SJB Bugojno, had reason to know that the detainees incarcerated at the Police Station Centar Bugojno in the Gymnasium were abused, and is responsible by his failure to act, that is, by failing to take reasonable and necessary measures to prevent the abuse of detainees, which, in view of the position he held, he was obliged to do, and by failing to take reasonable and necessary measures to prevent the abuse of detainees, as indicated above, or to punish those who abused the detainees who were his subordinates at the time and over whom he had effective control.

g) In the early August 1993, members of the Police Station Centar - SJB Bugojno took out from the basement of the Gymnasium detainees Josip Čubela, Jozo Andžić, Drago Hrnkaš and Ivica Đikić, who were detained there under **Senad Dautović's** approval, whereupon they were taken to one of the rooms in the Gymnasium where they were tied with police handcuffs to the tables and radiators and kept there for around three days without adequate food, during which time they repeatedly abused them physically and mentally on a daily basis, forced them to sing songs, threatened to kill them, punched and kicked them and beat them with clubs all over their bodies thus inflicting on them serious mental and physical suffering; after three days detainees Josip Čubela and Jozo Andžić managed to take off the handcuffs and escape, while Drago Hrnkaš and Ivica Đikić could not and did

not dare to escape and, after a while, they informed members of the Police Station Centar - SJB Bugojno of Josip Ćubela and Jozo Andžić's escape, whereupon out of frustration and being convinced that someone helped the detainees to escape, members of PS Centar - SJB Bugojno tortured Drago Hrnkaš and Ivica Đikić all the while asking them to reveal who from the ranks of the Police Station Centar helped Josip Ćubela and Jozo Andžić in their escape, which they were unable to tell them, while **Senad Dautović** as the Chief of SJB Bugojno, had reason to know that the detainees detained at the Police Station Centar Bugojno in the Gymnasium in Bugojno were tortured and abused, knew that Josip Ćubela and Jozo Andžić escaped from the premises of the Gymnasium where they had been detained under his approval, which he reported to the Bugojno Municipality Wartime Presidency, and is responsible by his failure to act, that is, by failing to take reasonable and necessary measures which would have prevented the torture and abuse of detainees, which in view of the position he held he was obliged to do, and by failing to take reasonable and necessary measures to prevent the torture and abuse of detainees, as described above, or to punish those responsible for the torture and inhuman treatment who were his subordinates at the time and over whom he had effective control.

NISVET GASAL

Section 5 (Count 10 b) and c) of the Amended Indictment)

a) During the period from the establishment of the FC *Iskra* stadium camp in August 1993, which was set up under the Decision of the Bugojno Municipality Wartime Presidency until 19 March 1994 where over 300 men – persons of Croat ethnicity were detained, after **Nisvet Gasal** assumed the post of Camp Warden from 22 September 1993 until 19 March 1994, for whose operation he was responsible, a large number of detainees were subjected to inhuman treatment by being taken away from the FC *Iskra* camp to perform forced labor, in the course of which detainees, with the knowledge of Nisvet Gasal, although he knew and was aware that such acts against detainees were prohibited and that they might be wounded while performing labor, were taken to the front lines between the Army of RBiH and the VRS and the HVO in the areas of Donji Vakuf, Gornji Vakuf/Uskoplje, Kupres and other places where they dug trenches, communication trenches and dugouts and where very often there were skirmishes involving the use of firearms, on which occasions a number of detainees were injured, Miroslav Zelić being

one of them, and upon his return to the camp he did not receive sufficient and adequate medical help, whereby he substantially participated in the unlawful taking of persons of Croat ethnicity to perform prohibited forced labor.

b) During the same period, a large number of detainees in the camp were abused by the guards at the camp and other unknown persons, while Nisvet Gasal failed to take reasonable and necessary measures to prevent the abuse of detainees at the camp for whose operation he was responsible, which he could have done by sanctioning or reporting his subordinates and other offenders, although he was aware that his failure to act will result in the abuse of detainees, with the following detainees abused in that period: Niko Visković a.k.a. Koni, Fabijan Lovrić, Kazimir Kaić, Ilija Udovičić, Željko Spremo, Mario Miloš, Zdravko Kezić, Milenko Begić, Ivica Lozančić, Ilija Dujmović whom the guards took out of the room in which he was detained to the camp compound where he was handcuffed and, subsequently, while one of the guards held a rifle pointed at him the other hit him several times in his stomach, thus inflicting on him serious mental and physical suffering and injury, and on other detainees.

Whereby the Accused Senad Dautović:

- under Sections 1, 2, 3 and 4 a) of the operative part of the Verdict committed the criminal offense under Article 173(1) c), as read with Article 180(1) of the CC of BiH,
- under Section 4 b), c), d), e), f) and g) of the operative part of the Verdict committed the criminal offense Under Article 173(1) c), as read with Article 180(2) of the CC of BiH

and the Accused Nisvet Gasal:

- under Section 5 a) of the operative part of the Verdict committed the criminal offense under Article 173(1) f), as read with Article 180(1) of the CC of BiH,
- under Section 5 b) of the operative part of the Verdict committed the criminal offense under Article 173(1) c), as read with Article 180(2) of the CC of BiH,

Therefore, pursuant to Article 285(1) of the CPC of BiH and by applying Articles 39, 40, 42 and 48 of the CC of BiH, and with respect to Nisvet Gasal by applying Articles 49 and 50 of the CC of BiH, the Panel of the Court of BiH

SENTENCES

Senad Dautović

TO IMPRISONMENT FOR THE TERM OF **THIRTEEN (13) YEARS**

and Nisvet Gasal

TO IMPRISONMENT FOR THE TERM OF **SIX (6) YEARS**

Pursuant to Article 56 of the CC of BiH, the time the Accused Senad Dautović and Nisvet Gasal spent in custody shall be credited towards the sentence, as follows:

- for the Accused **Senad Dautović** in the period from 16 April 2007 until 20 February 2009;
- for the Accused **Nisvet Gasal** in the period from 21 March 2007 until 13 May 2008, then from 31 May 2008 until 4 July 2008 and from 27 August 2008 until 19 February 2009.

Pursuant to Article 188(4) of the CPC of BiH, the Accused **Senad Dautović and Nisvet Gasal** are relieved of the obligation to cover the costs of the criminal proceedings and these costs shall be paid from budget appropriations.

Pursuant to Article 198(2) of the CPC of BiH, the aggrieved parties are referred to civil action to pursue their claims under property law.

Pursuant to Article 284(1) c) of the CPC of BiH

MUSAJB KUKAVICA son of Fuad and Habiba nee Bećar, born on 10 March 1970 in Jajce, residing in Bugojno at the address Donjići I, 32A, Personal Identification Number 1003970191268, a lathe operator by occupation, completed secondary school, literate, Bosniak by ethnicity, BiH citizen, married, no prior conviction, currently at liberty with imposed prohibiting measures under the Decision of the Court of Bosnia and Herzegovina

**SENAD DAUTOVIĆ AND NISVET GASAL
ARE ACQUITTED OF THE CHARGES THAT THEY:**

Section 6 (Count 10 a) of the Amended Indictment)

During the period from the establishment of the FC *Iskra* stadium camp in August 1993, which was set up under the Decision of the Bugojno Municipality Wartime Presidency for the purpose of carrying out the joint criminal enterprise (JCE) plan, in whose adoption **Senad Dautović** participated by the nature of his position as the Chief of SJB (Public Security Station) Bugojno, together with the Commander of the 307th Brigade of the Army of RBiH, of which the Commander of the OG (Operations Group) West was also informed, until 19 March 1994, members of the Army of RBiH Bugojno, including members of the 307th Brigade, members of the OG West and the civilian authorities of the Bugojno municipality, Bugojno Defense Staff and the SJB Bugojno, among them **Nisvet Gasal** and **Musajb Kukavica** who, as other members of the SJB Bugojno, were assigned to duties in the camp by **Senad Dautović** at the time of planning the camp's operation for the purpose of carrying out the plan of joint criminal enterprise, whereby he significantly contributed to the execution of the plan as the Chief of the SJB Bugojno at the moment of the camp's foundation until approximately mid-November 1993, with **Nisvet Gasal** as the Camp Warden at the FC *Iskra* stadium from 21 September 1993 until 19 March 1994 and **Musajb Kukavica** as the Commander of Camp Security at the FC *Iskra* stadium where from the time of establishment of the camp at the FC *Iskra* stadium until approximately mid-September 1993 and from 21 September 1993 until mid-March 1994, under the Decision of the Bugojno Municipality Wartime Presidency and OG West, they imprisoned and kept detained at the camp of the FC *Iskra* stadium in Bugojno over 300 men of Croat ethnicity, among them Croat civilians and members of the HVO Brigade "Eugen Kvaternik" Bugojno who laid down their arms after **Senad Dautović** had guaranteed their safety and treatment in accordance with the rules of international humanitarian law, and surrendered to **Senad Dautović** and members of the Army of RBiH, Bugojno Defense Staff and SJB Bugojno, all of which, at the time, were part of the Unified Command of the Army of the Republic of Bosnia and Herzegovina Bugojno - Command of the Bugojno Town that was established contrary to the rules of military organization in the Army of RBiH, with the prisoners being detained in inadequate and undersized rooms for such a large number of detainees in which the standards of hygiene were degrading because the captives were not able to bathe regularly, as a result of which for the entire duration of their captivity most of the captives bathed two or three times only, nor was there a sufficient number of toilets for the detainees to relieve themselves, but only one which most of the time was clogged with feces, with a few makeshift outdoor toilets in a later period which they could

use only when they were taken out for a brief walk within the compound during the day, which certainly was not enough to meet the needs of detainees, with insufficient heating in these inadequate rooms where the prisoners did not get enough food, nor were they provided with necessary medical help, while **Nisvet Gasal** and **Musajb Kukavica**, as the persons responsible for the camp's operation, kept detainees in inhumane conditions and failed to take adequate measures in order to bring the conditions in the camp to the level that would allow for the stay of detainees in the camp, nor did they take measures aimed at resolving the status of persons who were detained in the camp although they knew that these persons were never informed about the reasons for their detention, that is, no decision on their custody was ever issued and no proceedings were instigated in accordance with the applicable criminal and procedural law, or any other law and rules of conduct in relation to such persons, while **Senad Dautović**, as the Chief of SJB Bugojno and by the nature of this position a member of the Bugojno Municipality Wartime Presidency, knowingly and with the intention of executing the common purpose and JCE plan, of which he was aware by having participated in the decision-making process on the establishment of the camp and by having planned and supported the camp's operation by assigning members of SJB Bugojno to duties in the camp, and in spite of knowing that the rooms at the stadium were inadequate for such a large number of captives and that the captives did not have even the most basic conditions for their stay in such rooms, failed to act, that is, failed to take measures to improve conditions in the camp, in addition to failing to resolve the status of persons who had surrendered and failure to issue or insist on the issuance of any decision on the custody of persons, with reference to whom no proceedings were instigated in accordance with the applicable criminal and procedural law, or any other law or rules of conduct in relation to such persons, which he as the Chief of SJB Bugojno was obliged to do, thus significantly contributing to the unlawful imprisonment of these persons and inhuman treatment to which they were subjected.

SENAD DAUTOVIĆ:

Section 7 (Count 1 a), b) and c) of the Amended Indictment)

a) In the period between 23 July 1993 and 26 July 1993 approximately, after Croats, including civilians and members of the HVO Brigade *Eugen Kvaternik* Bugojno (mostly members of the 1st HVO Battalion) who laid down their arms after **Senad Dautović**

guaranteed their safety and treatment in accordance with the rules of international humanitarian law, surrendered to **Senad Dautović** and members of the Army of RBiH, Bugojno Defense Staff and Bugojno SJB, which at the time, contrary to the rules of military organization in the Army of RBiH, belonged to the established Unified Command of the Army of the Republic of Bosnia and Herzegovina Bugojno – Command of the Bugojno Town, and after the individuals who surrendered were separated in two groups in front of **Senad Dautović**, armed members of the Army of RBiH Bugojno, SJB Bugojno and Bugojno Defense Staff, in accordance with the approval and consent of **Senad Dautović**, escorted a group of around 50 individuals who surrendered and imprisoned them in a garage of a privately owned house in the Donjići settlement and kept them imprisoned in the garage, while a number of prisoners during the referenced time period were physically and mentally abused by members of the Army of RBiH Bugojno, SJB Bugojno and Bugojno Defense Staff by punching them in the garage and in front of it, kicking them, and hitting them with batons, blunt implements, rifle butts, while allowing Bosniak civilians and other members of the Army of RBiH Bugojno to abuse them in the same manner and over different parts of their bodies, and even beat Mario Glišić and Ivica Keškić with a steel rim of an automobile tire. The following persons were thus abused, some repeatedly: **Mario Glišić, Vlatko Kapetanović**, the only one who was handcuffed and over whose head and body water was poured, **Witness A, Ivica Keškić, Zdravko Križanac, Ivan Kapetanović, Ivica Lozančić, Miroslav Fabulić, Ivo Kujundžić, Darko Jurić**, and others. In that manner they inflicted severe physical and mental pain and suffering and visible bodily injuries upon the detainees, while **Senad Dautović** as the Commander of the Unified Command of the Army of RBiH Bugojno – Defense of the Bugojno Town and Chief of the Bugojno SJB, by the nature of which position he was a member of the Bugojno Municipality Wartime Presidency, knowingly and with the intention of execution of common purpose and joint criminal enterprise plan, of which he was aware since he was in the Donjići settlement during the surrender, he approved and consented to imprison those persons in the garage, he knew and had reason to know that the individuals of Croat ethnicity who surrendered and were imprisoned in the garage in the Donjići settlement were tortured in the referenced manner, by his failure to act, that is by failing to undertake measures to resolve the status of the individuals who surrendered and by not rendering any decisions on custody for those persons against whom no procedure was conducted in accordance with the applicable criminal and procedural law or any other law and rules of conduct in relation to those persons, and by failing to undertake measures to prevent the

torture of persons who surrendered, which he was obliged to do by the nature of the positions he held, and by failing to undertake necessary and reasonable measures to prevent the torture of individuals who surrendered and punish those who tortured them and who were subordinated to him at that point in time, significantly contributed to the unlawful imprisonment and torture of the said individuals,

b) On 23 July 1993, after Croats, including civilians of Croat ethnicity and members of the HVO Brigade *Eugen Kvaternik* Bugojno (mostly members of the 1st HVO Battalion), and one member of the civilian police force of the Croat Community Herceg Bosna Bugojno, who laid down their arms after **Senad Dautović** guaranteed their safety and treatment in accordance with the rules of international humanitarian law, surrendered to members of the Army of RBiH, Bugojno Defense Staff and Bugojno SJB, which at the time, contrary to the rules of military organization in the Army of RBiH, belonged to the established Unified Command of the Army of the Republic of Bosnia and Herzegovina Bugojno – Command of the Bugojno Town, armed members of the Army of RBiH, SJB Bugojno and Bugojno Defense Staff escorted a group of around 11 Croats, including civilians and the referenced HVO members, as well as a member of the civilian police, namely: Dragan Kasalo, Ivan Kapetanović, Miroslav Grljić, Zdravko Piplica and others, to the garage in that settlement where they were to be imprisoned, they ordered the individuals comprising the said group to line up against a wall of a house and after they did so, one member of the ARBiH Bugojno, holding a machete in his hand, came up to the minor Ivan Kapetanović threatening him with cutting his arm off as he had a rosary tattooed on it thus causing him severe mental pain and suffering, whereupon they ordered them to proceed and when they came in front of a private house which served as a field hospital, they ordered the persons from the referenced group to lie prone keeping their hands on their necks, which they did, and then they started kicking them and hitting them with rifle butts over all parts of their bodies inflicting on them severe physical and mental pain and suffering; then they took the entire group that surrendered under escort to a garage in this settlement and incarcerated them together with the other members of HVO and civilians of Croat ethnicity who surrendered in the same manner. **Senad Dautović**, as the Commander of the Unified Command of the Army of RBiH Bugojno - Defense of the Bugojno Town and Chief of SJB Bugojno, by the nature of which position he was a member of the Bugojno Municipality Wartime Presidency, knowingly and with the intention of executing the common purpose and joint criminal enterprise plan of which he was aware, since he was in the Donjići

settlement on that day and knew and had reason to know that the individuals of Croat ethnicity who surrendered were tortured in the manner described above, by his failure to act, that is by failing to undertake measures to prevent the torture of persons who surrendered, which he was obliged to do by the nature of the positions he held, and by failing to undertake necessary and reasonable measures to prevent the torture of individuals who surrendered and punish those who tortured them and who were at the time subordinated to him, significantly contributed to the torture of the said individuals,

c) In the period between 23 July 1993 until approximately late July 1993, after Croats, including civilians of Croat ethnicity and members of the HVO Brigade *Eugen Kvaternik* Bugojno (mostly members of the 1st HVO Battalion) who laid down their arms after **Senad Dautović** guaranteed their safety and treatment in accordance with the rules of international humanitarian law, surrendered to **Senad Dautović** and members of the Army of RBiH, Bugojno Defense Staff and Bugojno SJB, which at the time, contrary to the rules of military organization in the Army of RBiH, belonged to the established Unified Command of the Army of the Republic of Bosnia and Herzegovina Bugojno – Command of the Bugojno Town, and after the individuals who surrendered were separated in two groups in front of **Senad Dautović**, armed members of the Army of RBiH Bugojno, SJB Bugojno and Bugojno Defense Staff, in accordance with the approval and consent of **Senad Dautović**, unlawfully incarcerated and kept detained women, children and elderly men of Croat ethnicity, including Bosiljka Kasalo, in private houses in that settlement, while **Senad Dautović**, as the Commander of the Unified Command of the Army of RBiH Bugojno - Defense of the Bugojno Town and Chief of SJB Bugojno, by the nature of which position he was a member of the Bugojno Municipality Wartime Presidency, knowingly and with the intention of executing the common purpose and joint criminal enterprise plan of which he was aware, since he was in the Donjići settlement on that day and although he knew that women, children and elderly must not be detained without a decision on custody, with his approval and consent to detain the referenced individuals, by failing to render any decisions on custody for the referenced individuals although he knew it was mandatory in such instances, by his failure to act, that is by failing to undertake measures to prevent the detention of the said individuals which he was obliged to do by the nature of the positions he held, and by failing to undertake necessary and reasonable measures to prevent the unlawful imprisonment of the individuals who surrendered and punish those who unlawfully imprisoned them and who were subordinated to him at the given moment,

significantly contributed to the unlawful imprisonment of the said individuals,

Section 8 (Count 2 a), b) and c) of the Amended Indictment)

a) During the period from 25 July 1993 to about early August of the same year, after Croats, including civilians of Croat ethnicity and members of the HVO Brigade *Eugen Kvaternik* Bugojno (mostly members of the 1st HVO Battalion) who laid down their arms after **Senad Dautović** guaranteed their safety and treatment in accordance with the rules of international humanitarian law, surrendered to **Senad Dautović** and members of the Army of RBiH, Bugojno Defense Staff and Bugojno SJB, which at the time, contrary to the rules of military organization in the Army of RBiH, belonged to the established Unified Command of the Army of the Republic of Bosnia and Herzegovina Bugojno – Command of the Bugojno Town, and after prisoners of Croat ethnicity were relocated from the garage of a privately owned house in the Donjići settlement to the premises of the Marxist Center – Nuns' Cloister in Bugojno, members of the Army of RBiH, under inhumane conditions, without food and water, on the inadequate basement premises as they were too small for the imprisonment of a large number of persons and as there were no beds and as there was no light, and in a classroom of the *Marxist Centre* - Nuns' Cloister in Bugojno, incarcerated and held detained around 70 members of the HVO 1st Battalion and civilians of Croat ethnicity whom they did not allow to use the toilet which was in the building of the *Marxist Centre* but instead gave them a bucket to use for that purpose, while **Senad Dautović**, as the Commander of the Unified Command of the Army of RBiH Bugojno - Defense of the Bugojno Town and Chief of SJB Bugojno, by the nature of which position he was a member of the Bugojno Municipality Wartime Presidency, knowingly and with the intention of executing the common purpose and joint criminal enterprise plan of which he was aware, knowing that the persons who surrendered to him were imprisoned on the premises of the Marxist Center – Nuns' Cloister on inadequate premises and conditions, by his failure to act, that is, by failing to undertake measures to resolve the status of the individuals who surrendered and by not rendering decisions on custody for the persons who surrendered and against whom no procedure was conducted in accordance with the applicable criminal and procedural law or any other law and rules of conduct in relation to those persons, and by failing to undertake measures to improve conditions at the Marxist Center, although he was aware the premises were inadequate and too small for such a large number of prisoners who did not have beds to sleep on and for whom food and water

were not provided, significantly contributed to the unlawful imprisonment and inhumane treatment of those individuals,

b) During the same period and in the same place as in the previous Count, after Croats, including civilians of Croat ethnicity and members of the HVO Brigade *Eugen Kvaternik* Bugojno (mostly members of the 1st HVO Battalion), who laid down their arms after **Senad Dautović** guaranteed their safety and treatment in accordance with the rules of international humanitarian law, surrendered to **Senad Dautović** and members of the Army of RBiH, Bugojno Defense Staff and Bugojno SJB, which at the time, contrary to the rules of military organization in the Army of RBiH, belonged to the established Unified Command of the Army of the Republic of Bosnia and Herzegovina Bugojno – Command of the Bugojno Town, armed members of the military police of the 307th Brigade of the ARBiH, including military police officer Alija Osmić and others, on the premises of the Marxist Center beat up **Ivica Keškić and Vlatko Kapetanović** by punching them, kicking them and hitting them with blunt implements all over their bodies thus inflicting on them severe physical and mental pain and suffering and visible injuries. Thus, military police officers threw the beaten-up Vlatko Kapetanović into the trunk of a black Mercedes parked there and drove him to the vicinity of the settlement of Guvna, where the military police officers deprived Vlatko Kapetanović of his life, while **the Accused Senad Dautović**, as the Commander of the Unified Command of the Army of RBiH Bugojno - Defense of the Bugojno Town and Chief of SJB Bugojno, by the nature of which position he was a member of the Bugojno Municipality Wartime Presidency, knowingly and with the intention of executing the common purpose and joint criminal enterprise plan of which he was aware, and since he was present when those individuals surrendered and guaranteed their safety and treatment in accordance with the rules of international humanitarian law, he knew and had reason to know that the detainees were being tortured in the Marxist Center, and knew and had reason to know that Vlatko Kapetanović was tortured and killed, by his failure to act, that is, by failing to undertake measures to prevent the torture and killing of persons who surrendered, which he was obliged to do by the nature of the positions he held, and by failing to undertake necessary and reasonable measures to prevent the torture of individuals who surrendered and punish those who tortured them and who were subordinated to him as the tortures took place at the time when he was the Commander, significantly contributed to the torture of the referenced individuals, and the murder of Vlatko Kapetanović,

c) In the period from 25 July 1993 until approximately early August of the same year, after Croats, including civilians of Croat ethnicity and members of the HVO Brigade *Eugen Kvaternik* Bugojno (mostly members of the 1st HVO Battalion), who laid down their arms after **Senad Dautović** guaranteed their safety and treatment in accordance with the rules of international humanitarian law, surrendered to **Senad Dautović** and members of the Army of RBiH, Bugojno Defense Staff and Bugojno SJB, which at the time, contrary to the rules of military organization in the Army of RBiH, belonged to the established Unified Command of the Army of the Republic of Bosnia and Herzegovina Bugojno – Command of the Bugojno Town, and after the Bugojno Municipality Wartime Presidency decided that the prisoners could be used to perform labor to which **Senad Dautović** agreed, armed members of the Army of RBiH, as well as military police officers of the 307th Brigade of the Army of RBiH, including military police officer Alija Osmić, took the following prisoners from the Marxist Center where they were incarcerated: Ivo Kujundžić, Josip Lukić and others, to perform labor in the Vrbanja settlement, Sultanovići cemetery, and the Čaušlije settlement. The labor consisted of collecting the bodies of fallen soldiers of the Army of RBiH and civilians of Bosniak ethnicity in the Vrbanja settlement and digging graves and burials of the bodies at the Sultanovići cemetery, while in the Čaušlije settlement they took construction material from abandoned Croat houses, thus inflicting suffering on the detainees who were treated cruelly and inhumanely. When once a group of detainees was taken away, including Mario Zrno, to perform forced labor in the settlement of Vrbanja where they dug graves and buried the bodies of killed members of the Army of RBiH, SJB Bugojno and Bugojno Defense Staff, as well as civilians of Bosniak ethnicity, members of the ARBiH Bugojno, together with Bosniak civilians, physically and mentally abused detainee Mario Zrno, in the way that members of the ARBiH, including Muhko Velagić and Safet Velagić, together with civilians of Bosniak ethnicity, punched, kicked and beat him with pickaxes, shovels and other blunt objects all over his body, thus inflicting on him severe physical and mental pain and suffering, whereupon Mario Zrno succumbed to the inflicted injuries, while **the Accused Senad Dautović**, as the Commander of the Unified Command of the Army of RBiH Bugojno - Defense of the Bugojno Town and Chief of SJB Bugojno, by the nature of which position he was a member of the Bugojno Municipality Wartime Presidency, knowingly and with the intention of executing the common purpose and joint criminal enterprise plan of which he was aware, and although he knew and had reason to know that the prisoners were being used for forced labor and were in that

manner inhumanely treated, to which he agreed, he knew and had reason to know that the prisoners were tortured while performing labor by civilians and members of the Army of RBiH and that Mario Zrno was beaten and killed while laboring, by giving his consent to use prisoners for forced labor and by his failure to act, that is, by failing to undertake measures to prevent prisoners from performing forced labor and their torture while they labored, which he was obliged to do by the nature of the positions he held, and by failing to undertake necessary and reasonable measures to prevent forced labor and torture of detainees in the described manner, as well as the murder of Mario Zrno, and by failing to investigate those criminal offences committed by civilians and members of the Army of RBiH and by failing to file criminal reports against the civilians who partook in the torture of detainees with the relevant Prosecutor's Office, significantly contributed to forced labor and inhumane treatment and torture of those individuals, and the murder of Mario Zrno,

Section 9 (Count 3 of the Amended Indictment)

On 25 July 1993, after Croats, including civilians of Croat ethnicity and members of the HVO Brigade *Eugen Kvaternik* Bugojno (mostly members of the 2nd and 3rd HVO Battalion), who laid down their arms after the Unified Command of the Army of the Republic of Bosnia and Herzegovina Bugojno – Command of the Bugojno Town, whose Commander at the time was **Senad Dautović**, guaranteed their safety and treatment in accordance with the rules of international humanitarian law, surrendered to members of the Army of RBiH, Bugojno Defense Staff and Bugojno SJB, which at the time, contrary to the rules of military organization in the Army of RBiH, belonged to the established Unified Command of the Army of the Republic of Bosnia and Herzegovina Bugojno – Command of the Bugojno Town, armed members of the Army of RBiH Bugojno, SJB Bugojno and Bugojno Defense Staff, in accordance with the approval, consent and with the knowledge of **Senad Dautović**, escorted the referenced individuals of Croat ethnicity to the *Stipo Đerek* Primary School in Bugojno on which occasion they beat them, insulted them and abused them in different ways. When they brought them to the school, they ordered them to enter the gym of the school and while they were entering and afterwards, while they were leaving the gym, they hit them with rifle butts, punched them and kicked them all over their bodies, and when they entered the gym they ordered them to lie prone on the floor of the gym. When the prisoners did so, the members of the Bugojno Unified Command of the Army of the Republic of Bosnia and Herzegovina Bugojno kept on beating them all over

their bodies and abusing them mentally. Dragan Boškić, Ivica Klarić, Ante Akrap, Dejan Bilušić, Vjekoslav Bilušić, Frano Ribić, Zvonimir Tomas and others thus sustained severe physical and mental pain and suffering. During the abuse and after that, they took away their valuables, personal documents, clothes and footwear from some of them and ordered them to line up and head towards the Gymnasium building in Bugojno, which the prisoners did. While they were being taken under escort, the members of the Bugojno Unified Command of the Army of the Republic of Bosnia and Herzegovina punched them, kicked them, hit them with rifle butts forcing the prisoners to shout the words “Tegkbir” and “Allahu egber”, which the prisoners did. When they came to the Gymnasium building in the very center of the town of Bugojno wherein the SJB Bugojno Police Station Centar was quartered at the time, whose direct superior was **Senad Dautović**, members of the Police Station Centar - Bugojno SJB and other members of the Bugojno SJB, as well as civilians who formed a gauntlet in front of the Gymnasium in such a way that they lined up on both sides of the entrance into the Gymnasium building, leaving a passage in between, they ordered the detainees to start walking through the gauntlet only to start punching them, kicking them and striking them with rifle butts and other implements all over their bodies. The prisoners thus suffered severe physical and mental pain and suffering, whereupon members of the Police Station Centar locked the detainees in the gym of the Gymnasium building, while **Senad Dautović**, as the Commander of the Unified Command of the Army of RBiH Bugojno - Defense of the Bugojno Town and Chief of SJB Bugojno, by the nature of which position he was a member of the Bugojno Municipality Wartime Presidency, knowingly and with the intention of executing the common purpose and joint criminal enterprise plan of which he was aware, and since he learned on that day that the referenced individuals had surrendered, knew and had reason to know that the Croats who surrendered were tortured as described above, by his failure to act, that is, by failing to undertake measures to prevent the torture of the individuals who surrendered, which he was obliged to do by the nature of the positions he held, and by failing to undertake necessary and reasonable measures to prevent the torture of the individuals who surrendered and punish those who tortured them and who were at the time subordinated to him, significantly contributed to the torture of those individuals,

Section 10 (Count 4 of the Amended Indictment)

During the latter half of July 1993, and after 18 July 1993, members of the Bugojno ARBiH, Bugojno Defense Staff and Bugojno SJB, which at the time, contrary to the rules of military organization in the Army of RBiH, belonged to the established Unified Command of the Army of the Republic of Bosnia and Herzegovina Bugojno – Command of the Bugojno Town, whose Commander at the time was **Senad Dautović**, armed members of the Army of RBiH Bugojno, SJB Bugojno and Bugojno Defense Staff, in accordance with the approval, consent and with the knowledge of **Senad Dautović**, unlawfully imprisoned and held for several days on the premises of the Bugojno municipality building where the Bugojno Municipality Wartime Presidency was seated (and whose member, by his position of the SJB Bugojno Chief **Senad Dautović** was), civilians of Croat ethnicity and HVO members, including those who did not partake in the conflict and who were deprived of liberty at their homes, like Viktor Maros, while **the Accused Senad Dautović**, as the Commander of the Unified Command of the Army of RBiH Bugojno - Defense of the Bugojno Town and Chief of SJB Bugojno, by the nature of which position he was a member of the Bugojno Municipality Wartime Presidency, knowingly and with the intention of executing the common purpose and joint criminal enterprise plan of which he was aware, and as he was on the premises of the Bugojno municipality building at the time since he attended sessions of the Bugojno Municipality Wartime Presidency, approved and agreed with the imprisonment of those individuals on the premises of the Bugojno municipality building although he knew there were no grounds for their imprisonment or that the grounds ceased to exist, with his knowledge, approval and consent to imprison those individuals on the premises of the Bugojno municipality building and by his failure to act, that is, by failing to undertake measures to prevent their unlawful imprisonment, and by failing to undertake necessary and reasonable measures to prevent the unlawful imprisonment of those individuals on the premises of the Bugojno municipality building, significantly contributed to the unlawful imprisonment of those individuals,

Section 11 (Count 5 a), b) and d) of the Amended Indictment)

a) During the period from 24 July 1993 to approximately mid-August 1993, after Croats, including civilians of Croat ethnicity and members of the HVO Brigade *Eugen Kvaternik* Bugojno (mostly members of the HVO military police and members of Croat Community Herceg Bosna civilian police), who laid down their arms after **Senad Dautović** guaranteed

their safety and treatment in accordance with the rules of international humanitarian law, surrendered to **Senad Dautović** and members of the Army of RBiH, Bugojno Defense Staff and Bugojno SJB, which at the time, contrary to the rules of military organization in the Army of RBiH, belonged to the established Unified Command of the Army of the Republic of Bosnia and Herzegovina Bugojno – Command of the Bugojno Town, armed members of the Bugojno ARBiH, Bugojno SJB and Bugojno Defense Staff, in accordance with the approval and with the consent of **Senad Dautović**, took under escort around 150 individuals of Croat ethnicity and imprisoned them in the basement of the *Slavonija DI* Furniture Showroom in the immediate vicinity of the Bugojno SJB, although the premises were inadequate and where the imprisoned individuals were not provided with sufficient food, water, adequate and necessary medical care or standards of hygiene, as the water on the floor reached their ankles and was contaminated with feces, whereupon members of the Bugojno ARBiH, Bugojno SJB and Bugojno Defense Staff, including Šaćir Duraković and Ened Vrban, took the detainees out of the basement or they called them to come to the ground floor of the Furniture Showroom and then physically and mentally abused them by punching, kicking and hitting them with metal objects, police batons and other blunt objects all over their bodies, thus inflicting on them severe physical and mental pain and visible injuries over their bodies. Thus, they took out or called out and abused the following persons, some repeatedly: Zrinko Alvir, Miroslav Marijanović, Dragan Brečić, Franjo Košak, Jadranko Gvozden, Ilija Dujmović, Niko Džaja, Jozo Andžić, Milenko Behara, Ilija Udovičić, Stipo Udovičić, Josip Čubela, Stipica Zelić whose beating was ordered and approved by Senad Dautović in the way that he incited his subordinated members of the SJB, members of the Army of RBiH and Bugojno Defense Staff to torture the detainees, Stjepko Maros, Ozren Gvozdenović, Perica Jarčević, Ivica Vukadin, Ante Vukadin, Witness D and Mladen Havranek who succumbed to the injuries sustained during the abuse, while **the Accused Senad Dautović**, as the Commander of the Unified Command of the Army of RBiH Bugojno - Defense of the Bugojno Town and Chief of SJB Bugojno, by the nature of which position he was a member of the Bugojno Municipality Wartime Presidency, knowingly and with the intention of executing the common purpose and joint criminal enterprise plan of which he was aware, and since he was present when those individuals surrendered, ordered or approved and consented to the imprisonment of those individuals in the basement of the Furniture Showroom although he knew the premises were inadequate, and ordered and approved that Stipica Zelić be beaten in the way that he incited his subordinated members of the Bugojno SJB and other members of the Army

of RBiH and Bugojno Defense Staff to torture the prisoners, and since he knew and had reason to know that the Croats who surrendered and were imprisoned in the basement of the Furniture Showroom in the immediate vicinity of the Bugojno SJB were tortured as described above, and knowing that Mladen Havranek succumbed after the beating, by ordering or approving or giving his consent to imprison the individuals who surrendered in the basement of the Furniture Showroom, which he knew were inadequate, by his failure to act, that is, by failing to undertake measures to resolve the status of individuals who surrendered and by not rendering any decisions on custody for the persons who surrendered and against whom no procedure was conducted in accordance with the applicable criminal and procedural law or any other law and rules of conduct in relation to those persons, and by failing to undertake measures to improve the conditions at the Furniture Showroom although he knew the basement was unfit and too small for such a large number of prisoners who did not have beds to sleep on and were without food and water, by ordering and approving the beating of Stipica Zelić, that is, inciting others to torture the prisoners and by his failure to act, that is, by failing to undertake measures to prevent the torture of individuals who surrendered, which he was obliged to do by the nature of the positions he held, and by failing to undertake necessary and reasonable measures to prevent the torture of the individuals who surrendered and punish those who tortured them and who were subordinated to him at that time, significantly contributed to the imprisonment and inhumane treatment of the persons imprisoned on inadequate premises and the torture of those persons as well as the murder of Mladen Havranek,

b) During the same period and in the same place as in the previous counts, members of the Bugojno ARBiH, Bugojno SJB and Bugojno Defense Staff, including a member of the Bugojno SJB Nijaz Bevrnja, took out of the unfit basement of the *Slavonija Di* Furniture Showroom located in the immediate vicinity of the Bugojno SJB the detained members of the HVO military police and civilian police of the Croat Community Herceg Bosna who laid down their arms after **Senad Dautović** guaranteed their safety and treatment in accordance with the rules of international humanitarian law, and surrendered to **Senad Dautović**, and treated them in an inhumane manner and mentally abused the detainees Josip Čubela, Ilija Dujmović and others in such a way that they took them out of the basement of that Furniture Showroom and brought them to the ground floor or took them out of the building of the Furniture Showroom, lined them up and pulled a trigger of unloaded rifles that were aimed at the detainees and staged fake executions of the

detainees, whereby they inhumanely treated detainees who feared for their lives and inflicted on them severe physical pain and suffering, while **the Accused Senad Dautović**, as the Commander of the Unified Command of the Army of RBiH Bugojno - Defense of the Bugojno Town and Chief of SJB Bugojno, by the nature of which position he was a member of the Bugojno Municipality Wartime Presidency, knowingly and with the intention of executing the common purpose and joint criminal enterprise plan of which he was aware, knew and had reason to know that the prisoners in the basement of the Furniture Showroom located in the immediate vicinity of the Bugojno SJB were inhumanely treated and that the detainees were being tortured by way of staged executions, by his failure to act, that is, by failing to undertake measures to prevent the inhumane treatment of individuals who surrendered, through staged executions, which he was obliged to do by the nature of the positions he held, and by failing to undertake necessary and reasonable measures to prevent the inhumane treatment and torture of detainees in the manner described above and punish those who inhumanely treated and tortured them and who were subordinated to him at the given moment, significantly contributed to the inhumane treatment of those persons,

c) During the period from 24 July 1993 to approximately mid-August 1993, after Croats, including civilians of Croat ethnicity and members of the HVO Brigade *Eugen Kvaternik* Bugojno (mostly members of the HVO military police and members of the Croat Community Herceg Bosna civilian police), who had laid down their arms after **Senad Dautović** guaranteed their safety and treatment in accordance with the rules of international humanitarian law, surrendered to **Senad Dautović** and members of the Army of RBiH, Bugojno Defense Staff and Bugojno SJB, which at the time, contrary to the rules of military organization in the Army of RBiH, belonged to the established Unified Command of the Army of the Republic of Bosnia and Herzegovina Bugojno – Command of the Bugojno Town, and after armed members of the Bugojno ARBiH, Bugojno SJB and Bugojno Defense Staff, in accordance with the approval and with the consent of **Senad Dautović** imprisoned them in the basement of the *Slavonija Di* Furniture Showroom (in the immediate vicinity of SJB Bugojno), and after the Bugojno Municipality Wartime Presidency decided that the prisoners can be used to perform labor, to which **Senad Dautović** agreed, members of the Bugojno ARBiH, Bugojno SJB and Bugojno Defense Staff, took detainees, including Drago Žulj, Zdravko Juričić, witness D and Vinko Zrno, out of that Furniture Showroom to perform forced labor in the settlement of Vrbanja. The

forced labor consisted of digging up graves and burying the killed members of the ARBiH and civilians of Bosniak ethnicity. Thus, the detainees suffered pain and were cruelly and inhumanely treated as they were physically and mentally abused in such a way that the members of the Bugojno ARBiH and civilians of Bosniak ethnicity who were present there insulted them, punched them, kicked them, beat them with rifle butts and other blunt objects all over their bodies, inflicting on the detainees great physical and mental pain and suffering, whereupon they were taken back to the basement of the Furniture Showroom and detained again with the injuries sustained, after which they took Vinko Zrno to the Bugojno Health Centre because of the injuries he sustained, while **the Accused Senad Dautović**, as the Commander of the Unified Command of the Army of RBiH Bugojno - Defense of the Bugojno Town and Chief of SJB Bugojno, by the nature of which position he was a member of the Bugojno Municipality Wartime Presidency, knowingly and with the intention of executing the common purpose and joint criminal enterprise plan of which he was aware, knew and had reason to know that the prisoners were used to perform forced labor and were thus inhumanely treated, and having given his consent and knowing and having reason to know that the prisoners were tortured during labor by civilians and members of the Army of BiH, by giving his consent to use the prisoners for forced labor and by his failure to act, that is, by failing to undertake measures to prevent the forced labor of prisoners and torture of prisoners during labor, which he was obliged to do by the nature of the positions he held, and by failing to undertake necessary and reasonable measures to prevent the forced labor and torture of detainees in the manner described above and to investigate those criminal offences committed by civilians and members of the Army of RBiH, and by failing to file criminal reports against the civilians who partook in the torture of detainees with the relevant Prosecutor's Office, significantly contributed to the forced labor and inhumane treatment and torture of those individuals,

Section 12 (Count 6 of the Amended Indictment)

During the period from 24 July 1993 to approximately early August 1993, after Croats, including civilians of Croat ethnicity and members of the HVO Brigade *Eugen Kvaternik* Bugojno (mostly members of the HVO military police and members of the Croat Community Herceg Bosna civilian police), who laid down their arms after **Senad Dautović** guaranteed their safety and treatment in accordance with the rules of international humanitarian law, surrendered to **Senad Dautović** and members of the Army of RBiH,

Bugojno Defense Staff and Bugojno SJB, which at the time, contrary to the rules of military organization in the Army of RBiH, belonged to the established Unified Command of the Army of the Republic of Bosnia and Herzegovina Bugojno – Command of the Bugojno Town, armed members of the Bugojno ARBiH, Bugojno SJB and Bugojno Defense Staff, in accordance with the approval and consent of **Senad Dautović**, took under escort and incarcerated more than 100 civilians of Croat ethnicity, women, children and elderly, where they were held detained by members of the military police of the 307th Brigade of the Army of RBiH under inhumane conditions, without food and water, while **Senad Dautović**, as the Commander of the Unified Command of the Army of RBiH Bugojno - Defense of the Bugojno town and Chief of SJB Bugojno, by the nature of which position he was a member of the Bugojno Municipality Wartime Presidency, knowingly and with the intention of executing the common purpose and joint criminal enterprise plan of which he was aware, and since he was present when those individuals surrendered, ordered or approved and consented to the imprisonment of those individuals on the premises of the Cultural and Sports Center although he knew the premises were inadequate and that food was not provided to the imprisoned individuals, and by failing to render any decisions on custody for the referenced individuals although he knew it was mandatory in such instances, significantly contributed to the unlawful imprisonment of those individuals and their inhumane treatment,

Section 13 (Count 7 of the Amended Indictment)

On 23 July 1993, members of the Bugojno ARBiH, Bugojno SJB and Bugojno Defense Staff, brought in front of the *Ljubljanska banka* civilian Miro Kolovrat who was unlawfully imprisoned in the Gymnasium, in accordance with the approval and order of **Senad Dautović**, and ordered him to call HVO members at the *Ljubljanska banka* to surrender, which Miro Kolovrat did. As the HVO members did not surrender even after repeated calls, one of the members of the military units put a pistol against Miro Kolovrat's head, fired a bullet and thus deprived him of his life, while **the Accused Senad Dautović**, knowingly and with the intention of executing the common purpose and joint criminal enterprise plan of which he was aware, as he knew and had reason to know that Miro Kolovrat was imprisoned at the Gymnasium in accordance with his approval and order, and by failing to provide for the security of the detainee Miro Kolovrat and by failing to undertake necessary and reasonable measures to prevent the murder of Miro Kolovrat and punish his murderer

who was at the time his subordinated, that is, order an investigation to be conducted against the person who murdered Miro Kolovrat and file a criminal report with the relevant District Prosecutor's Office in Travnik, significantly contributed to the murder of Miro Kolovrat,

Section 14 (Count 9 g) and i) of the Amended Indictment)

a) In the period from 18 July 1993 to 8 October 1993, after the Bugojno Municipality Wartime Presidency decided that detainees could be used for labor, which was met with the approval of **Senad Dautović**, who, under this decision, ordered and approved that members of the SJB Bugojno, Asim Balihodžić being one of them, take out from the basement of the Police Station Centar Bugojno, located in the Gymnasium, the Croat detainees who were detained on those premises under Senad Dautović's orders and approval, whereupon they were taken to perform forced labor in Bugojno and settlements around Bugojno, which included collecting the dead bodies of killed members of the Army of RBiH, Bosniak civilians, members of the HVO and civilians of the Croat ethnicity, digging the graves and burying the dead bodies, and performing other types of labor for the needs of the Army of RBiH and the civilian authorities in Bugojno, which caused detainees' suffering as they were exposed to cruel and inhuman treatment, with the following detainees taken to perform forced labor: Berislav Džalto, Dragan Boškić, Slaven Brajković, Tomislav Mikulić, Ilija Dujmović, Rade Marijanović, Dragan Nevjestić, Dragan Kasalo and other detainees, while **Senad Dautović**, as the Commander of the Unified Command of the Army of RBiH Bugojno - Defense of the Bugojno Town and Chief of SJB Bugojno, by the nature of which position he was a member of the Bugojno Municipality Wartime Presidency, knowingly and with the intention of executing the common purpose and JCE plan of which he was aware, ordered and approved that detainees be used for forced labor in full knowledge that such practice constituted inhuman treatment, significantly contributed to the forced labor and inhuman treatment of detainees.

b) In the second half of July 1993, after 18 July 1993, members of the SJB Bugojno apprehended Dragan Nevjestić, who had laid down his arms and surrendered to members of SJB Bugojno at the Post Office in Bugojno, to the premises of the Agricultural Cooperative where the Special Purpose Unit of the SJB Bugojno had its headquarters, more precisely to the office of Nihad Šabić, whose immediate superior at the time was

Senad Dautović, whereupon Nihad Šabić interrogated Dragan Nevjestić by holding a knife to his neck twice with the intention of slitting Dragan Nevjestić's throat, thereby inflicting on him severe mental pain and suffering; following the interrogation, members of SJB Bugojno took Dragan Nevjestić to the Police Station Centar in the building of the Gymnasium and locked him up in the basement together with other detainees who had already been detained there, while **Senad Dautović**, as the Commander of the Unified Command of the Army of RBiH Bugojno - Defense of the Bugojno Town and Chief of SJB Bugojno, by the nature of which position he was a member of the Bugojno Municipality Wartime Presidency, knowingly and with the intention of executing the common purpose and JCE plan of which he was aware, knew or had reason to know that the detainees were tortured following their surrender, and by his failure to act, that is, by failing to take measures that would have precluded any possibility of the torture of captives following their surrender, which, in the view of the positions he held, he was obliged to do, and by failing to take necessary and reasonable measures to prevent the torture of captives and to sanction the offenders who were his direct subordinates at the time, significantly contributed to the torture of Dragan Nevjestić by Nihad Šabić on the premises of the Agricultural Cooperative Bugojno where the Special Purpose Unit of SJB Bugojno had its headquarters.

MUSAJB KUKAVICA:

Section 15 (Count 10 b) and c) of the Amended Indictment)

a) During the period from the establishment of the FC *Iskra* stadium camp in August 1993, until 19 March 1994, under the Decision of the Bugojno Municipality Wartime Presidency, the 307th Brigade and the OG West of the Army of RBiH Bugojno, and from mid-November 1993 under the orders and approval of Senad Dautović as the Assistant Commander for Security in the OG West, a large number of detainees were subjected to inhuman treatment by being taken away from the FC *Iskra* stadium to perform forced labor, on which occasions **Musajb Kukavica**, although he knew and was aware that such acts against prisoners were prohibited and that detainees might be killed or wounded while performing this labor, was frequently present at the time of selection of detainees for labor and sometimes he even decided which detainees will go to perform labor, whereupon detainees were taken to perform labor across Bugojno where they were sweeping the

streets and performing other physical labor or were taken to the front lines between the Army of RBiH and the Army of Republika Srpska (VRS) and the HVO in the areas of Donji Vakuf, Gornji Vakuf/Uskoplje and Kupres where their lives were endangered, more specifically to: Prusac, Guvna, Bistrica, Pajić Polje, Donja Hrasnica, Gornja Hrasnica, Vejići, Pirići, Duratbegović Dolac, Garačački Podovi and other places where they dug trenches, communication trenches and dugouts, and very often they were used as a “human shield” and were tortured by members of the Army of RBiH who kicked and punched them all over their bodies, where a number of detainees sustained injuries while performing labor, among them Stipica Đapić, witness A, Božo Dominik, Dejan Bilušić, Miroslav Fabulić, Franjo Kasalo, Stipo Strinić a.k.a. Buce, Živko Ljuban, Tomislav Knežević, who upon their return to the camp did not receive sufficient medical help, with detainees Željko Tabaković and Davor Jezidžić getting killed, with the same practice of inhuman treatment of detainees and taking of detainees for forced labor continuing after **Nisvet Gasal** assumed the post of Camp Warden from 21 September 1993 onwards; with the knowledge and approval of Nisvet Gasal to Musajb Kukavica and other guards in the camp in relation to the selection of detainees who were to perform labor, although he was aware that such acts against detainees were prohibited and that they might be killed or wounded while performing labor, with **Musajb Kukavica** acting in the same manner as before, a large number of detainees were subjected to inhuman treatment by being taken away from the camp to perform forced labor in Bugojno where they were sweeping the streets, chopping the wood for the needs of members of the Army of RBiH and performing other types of labor, or were taken to the front lines between the Army of RBiH and the VRS and the HVO in the areas of Donji Vakuf, Gornji Vakuf/Uskoplje and Kupres where their lives were endangered, more specifically to: Podripci, Sabljari, Pajić Polje, Donja Hrasnica, Gornja Hrasnica, Pirići, Duratbegović Dolac, Garačački Podovi and other places where they dug trenches, communication trenches and dugouts and where very often there were skirmishes involving the use of firearms, on which occasions they were used as a “human shield”, which resulted in injuries to a number of detainees, Miroslav Zelić being one of them, and upon their return to the camp they did not receive sufficient and adequate medical help,

b) During the same period as in the previous Count, a large number of detainees in the camp were tortured by the guards at the camp in FC *Iskra* stadium, who were Musajb Kukavica’s subordinates, and other members of the Army of RBiH who were allowed into

the camp by guards for the sole purpose of beating the Croat detainees, of which **Musajb Kukavica** was aware but still allowed other members of the Army of RBiH to enter the camp, thus failing to take necessary and reasonable measures to prevent the torture of prisoners at the camp for whose operation he, among others, was responsible, which he could have done by taking control of the keys to the rooms in which the captives were detained, by sanctioning or reporting his subordinates and other offenders; on these occasions, detainees were tortured in such a way that the guards, and sometimes Musajb Kukavica in person, took them out of the room in which they were detained to the hallway of the stadium, the stands or the pitch, whereupon the guards and members of the Army of RBiH punched and kicked them and beat them with blunt objects all over their bodies, thus inflicting on them severe physical and mental pain and suffering, with the following detainees tortured in this way: Dragan Erkapić, Milenko Kasalo, Mijo Marjanović twice, Milenko Begić, Zdravko Kezić, Ivo Miloš, Nikica Miloš, Dragan Brečić, a person by the last name of Jarčević and other detainees, with the same practice of torture of detainees continuing after **Nisvet Gasal** assumed the post of Camp Warden from 21 September 1993 onwards; in this period, guards allowed members of the Army of RBiH to enter the camp just to torture the detainees, which **Musajb Kukavica** knew but still failed to do anything to prevent this torture, which he could have done by taking control of the keys to the rooms in which the captives were detained although he was aware that as a result of his failure to act the captives were going to be tortured, and indeed the following detainees were tortured in that period: Dragan Erkapić, Niko Visković a.k.a. Koni, Fabijan Lovrić, Kazimir Kajić, Ilija Udovičić, Željko Spremo, Mario Miloš, Zdravko Kezić, Milenko Begić, Ivica Lozančić and Ilija Dujmović whom the guards took out of the room in which he was detained to the camp compound where he was handcuffed and, subsequently, while one of the guards held a rifle pointed at him the other hit him several times in his stomach, thus inflicting on him severe physical and mental pain and suffering, as well as Željko Lozić, Miroslav Fabulić and other detainees, while **Musajb Kukavica**, failed to take necessary and reasonable measures to prevent the torture of detainees at the camp for whose operation he was responsible and to sanction or report his subordinates and other offenders with the aim of preventing the torture, with many detainees being taken out of the rooms in the camp in which they were detained by the guards, and some of them by **Musajb Kukavica** in person, and subsequently leaving the camp that was under their control under the escort of guards and members of the military police for interrogation on the premises of the BH Bank in Bugojno where the Military Police of the 307th Brigade was

stationed and, starting from November 1993, the Military Police Company of the OG West of the Army of RBiH, where they were tortured by military policemen who punched and kicked them and beat them all over their bodies, after which they were taken back to the camp with visible injuries all over their bodies, among them detainees Marko Krajinović, Ivo Juričić a.k.a. "Taran", Ivica Kajić, Ivica Bartulović, Dragan Erkapić, Ivo Miloš and other detainees, whereas detainees Miroslav Dilber, Ante Markulj, Dragan Erkapić the second time he was taken away, Dragan Miličević, Ivo Miloš the second time he was taken away, Perica Kovačević, Zoro Galić, Zdravko Juričić, Niko Zlatunić, Nikica (son of Jozo) Miloš, Nikica (son of Dragutin) Miloš, Perica Crnjak and Branko Crnjak, who were taken to the BH Bank and tortured in the same manner, never returned to the camp; **Musajb Kukavica** knew, as did the captives who were detained in the camp, that the detainees taken for interrogation to the BH Bank were tortured, but he still enabled and consented to the taking of detainees for interrogation and torture, which he never opposed nor did he report the torture of detainees brought there, whereby he aided and abetted the torture of these detainees,

Whereby the Accused Musajb Kukavica would have committed:

- under Section 6 of the operative part of the Verdict the criminal offense under Article 173(1) c) and e), as read with Article 180(1) and Article 29 of the CC of BiH
- under Section 15 a) of the operative part of the Verdict the criminal offense under Article 173(1) c) and f), as read with Article 180(1) and Article 29 of the CC of BiH
- under Section 15 b) of the operative part of the Verdict the criminal offense under Article 173(1) c), as read with Article 180(1) and (2) and Article 29 of the CC of BiH, and with respect to torture at the BH Bank, as read with Article 180(1) and Article 31 of the CC of BiH.

The Accused Nisvet Gasal:

- under Section 6 of the operative part of the Verdict the criminal offense under Article 173(1) c) and e), as read with Article 180(1) and Article 29 of the CC of

BiH

The Accused Senad Dautović, by the acts described in the acquitting part of the operative part, would have committed:

- **the criminal offense of War Crimes against Civilians under Article 173(1) a), c) e) and f), War Crimes against the Wounded and Sick under Article 174(1) a) and b), War Crimes against Prisoners of War under Article 175(1) a) and b), as read with Article 180(1) and Article 29 of the CC of BiH.**

Pursuant to Article 189(1) of the CPC of BiH, costs of the criminal proceedings in the acquitting part of the Verdict shall be paid from budget appropriations.

I. PROCEDURAL HISTORY

A. INTRODUCTION

1. On 17 September 2007, the Prosecutor's Office of BiH filed Indictment No. KT-RZ-125/07 against Nisvet Gasal and Musajb Kukavica, which was confirmed on 19 September 2007, charging them with the commission of the criminal offence of War Crimes against Civilians in violation of Article 173(1)(c) and (f), in conjunction with Article 180(1) and (2), and Article 29 of the Criminal Code of BiH ("CC of BiH").

2. On 7 December 2007 the Prosecutor's Office filed the Indictment No. KT-RZ 162/05 against Enes Handžić and Senad Dautović, which was confirmed on 11 December 2007. The Indictment charges the Accused Handžić and Dautović with the commission of the criminal offences of War Crimes against Civilians in violation of Article 173(1)(a), (c), (e) and (f), War Crimes against the Wounded and Sick in violation of Article 174(1)(a) and (b) and War Crimes against Prisoners of War, in violation of Article 175(1)(a) and (b), in conjunction with Article 180(1) and (2) and Article 29 of the CC of BiH.

3. The Accused Nisvet Gasal and Musajb Kukavica entered the plea of not guilty at the arraignment hearing on 27 September 2007, while the Accused Enes Handžić and Senad Dautović entered the plea of not guilty at the arraignment hearing on 18 December 2007.

4. After the case file was referred to the Panel for the scheduling of the main trial, the Panel decided, for reasons of judicial economy, to merge the case against the Accused Nisvet Gasal and Musajb Kukavica with the case against the Accused Senad Dautović and Enes Handžić, because of the identical factual description in both Indictments and the objective connection between the cases. Additionally, according to the charges in the Indictments, several persons participated in the commission of the criminal offences during the same event and the Prosecution intended to present the same evidence in both cases.

5. The main trial against the four Accused commenced on 6 February 2008.

6. In the course of the main trial the Prosecution and the Defense tendered their

evidence and, on 26 April 2011, the Prosecution filed an amended indictment against Enes Handžić and the Agreement on the admission of guilt entered into between the Prosecution and the Accused Enes Handžić. On 27 April 2011, the Panel issued a decision separating the proceedings against the Accused Nisvet Gasal, Musajb Kukavica, Senad Dautović and Enes Handžić, and resumed the proceedings against Enes Handžić under number S1 1 K 005760 11 Krl.

7. On 29 June 2011 the Prosecution filed the amended indictment against the Accused Nisvet Gasal, Musajb Kukavica and Senad Dautović. The amendments were made in the factual description of the Indictment and the legal qualification of the Accused's liability.¹

B. PROSECUTION EVIDENCE

8. In the course of the main trial, the Prosecution called the following witnesses: Admir Slipac, Alen Slipac, Alvir Zrinko, Bahrija Milanović, Asim Balihodžić, Bernes Gavranović, Bosiljka Kasalo, Dragan Boškić, Božo Križanac, Vlatko Brnas, Josip Čubela, Damir Grgić, Damir Kolovrat, Dragan Nevjestić, Drago Žulj, Berislav Džalto, Ivica Đikić, Franjo Vejić, Sabahudin Gazić, Gordana Raić, Ivica Gunjača, Slava Gvozden, Ozren Gvozdinović, Ilija Dujmović, Ilija Udovičić, Željko Ištuk, Ivan Kapetanović, Ivica Keškić, Jasmin Ivković, Ivo Kujundžić, Ivo Mršo, Jasminka Šečić, Berislav Jezidžić, Josip Lukić, Kaić Kazimir, Josip Kalaica, Anto Kapetanović, Dragan Kasalo, Ivica Klarić, Janko Ljubos, Miroslav Marijanović, Mario Franić, Mario Glišić, Marko Gunjača, Milenko Begić, Milenko Kasalo, Mirko Tomljenović, Miroslav Zelić, Suljo Nebić, Nevzudin Kero, Nijaz Habib, Nikica Marković, Jadranka Nikolić, Rade Marjanović, Zijad Salkić, Sead Talić, Semir Osmić, Slaven Brajković, Stipica Džapić, Stjepan Cvijanović, Stjepan Radoš, witness A, witness B, witness D, Jozo Tomas, Tomislav Turalija, Ivica Topić, Mirsad Velić, Viktor Maros, Vinko Pavić, Dražen Vučak, Stipo Vučak, Zahid Jusić, Zahid Karagić, Zdravko Kezić, Zoran Gvozden, Zoran Pocrnja, Željko Lozić, Željko Miloš, Živko Ljuban. The list of documentary evidence adduced by the Prosecution is attached in Section XII Part B of this Verdict as its integral part.

C. DEFENSE EVIDENCE

1. Defense of the first listed Accused Nisvet Gasal and Musajb Kukavica

9. Defense for the Accused Nisvet Gasal and Musajb Kukavica called the following witnesses: Hamid Đopa, Suvad Delić, Nermin Fejzić, Besim Cetin, Enver Halilović, Zdenko Ivoš, Ivan Faletar, and Nisvet Gasal. The list of documentary evidence tendered by the Defense for the Accused Nisvet Gasal and Musajb Kukavica is attached in Section XII Part C of this Verdict as its integral part.

2. Defense for the third listed Accused Enes Handžić

10. Defense for the Accused Enes Handžić called the following witnesses: Dževad Mlačo, Selmo Cikotić, Enes Šehić, Edin Čorhusić, Nermin Aliefendić, Memnun Mustajebogvić, Halid Manjušak, Mirsad Šutković, Merdžad Đugum, Hidajet Vinčević, Vahid Jašarević, Jasmina Mešić, Gurbeta Mlačo Lejla, Muhamed Donlić, Senad Alkić, Reuf Balihodžić, Haris Haznadarević, Azrudin Sukara, Sabahudin Gazić and the expert witness Fikret Muslimović. The list of documentary evidence tendered by the Defense for the Accused Enes Handžić is attached in Section XII Part D of this Verdict as its integral part.

3. Defense for the fourth listed Accused Senad Dautović

11. Defense for the Accused Senad Dautović called the following witnesses: Fahrudin Agić, Refik Lendo, Anto Breljak, Anto Ivković, Nijaz Jusufspahić, Munib Mahalbašić, Mujo Sarajlić, Asim Bašić, Abdulah Krabeg, Abdulah Bevrnja, Pavo Dragun, Ivica Pavlović, Fuka Senad, Milan Brečić, Abdulah Jeleč, Eniz Rujanac, Mustafa Strukar, Asim Balihodžić, Pero Berišić, Nedžad Hozić, Ahmed Kico, Besim Hodžić and the expert witness Mile Matijević. The list of documentary evidence tendered by the Defense for the Accused Senad Dautović is attached in Section XII Part E of this Verdict as its integral part.

¹ See Section XII Part A Procedural Decision No. 11 (*Gasal et al.*, S1-1-K003485 (Ct. of BiH) 'Decision to refuse objections by the Defense in relation to the Amended Indictment exceeding the scope of the original Indictment'.

D. WITNESS CALLED BY THE COURT

12. Pursuant to Article 261(2)(e) of the Criminal Procedure Code of BiH (“CPC of BiH”), on 13 April 2010 the Panel decided to call the witness Selmo Cikotić, who testified again on 20 April 2011.

E. CLOSING ARGUMENTS

1. Closing arguments of the Prosecution

13. The Prosecution submitted a closing brief and presented their closing arguments to the Panel. The Prosecution submitted that there was a war in BiH and an armed conflict between the HVO (“Croatian Defense Council”) and the Army of the Republic of Bosnia and Herzegovina (“ARBiH”) in the municipality of Bugojno during the period referenced in the Amended Indictment. The Prosecution alleged that the victims/injured listed in the Amended Indictment were considered protected persons under Article 3(1) of the Geneva Conventions relative to the Protection of Civilian Persons in time of War of 12 August 1949 and the Treatment of Prisoners of War of 12 August 1949. The Prosecution submitted that the Accused Nisvet Gasal, Musajb Kukavica and Senad Dautović, by their acts, omissions and failures to punish, as charged in the Indictment, acted contrary to Article 3 of the Geneva Conventions, thereby violating the rules of international law.

14. The Prosecution alleged that the Accused Dautović, between 18 July 1993 and 27 July 1993, was the Commander of the Unified Command of the ARBiH Bugojno – Command of the Bugojno town and the Chief of the Bugojno Public Security Station. The Prosecution further alleged that between 27 July 1993 and mid-November 1993 the Accused Dautović was the Chief of the SJB Bugojno, and that between mid-November 1993 and 19 March 1994 he was the Assistant Commander for Security of the OG West of the ARBiH.

15. The Prosecution submitted that the Accused Nisvet Gasal was the camp warden of the FC *Iskra* Stadium between 21 September 1993 and 19 March 1994, and that the Accused Musajb Kukavica was the Security Camp Commander of the FC *Iskra* Stadium from the time the FC *Iskra* Stadium camp was established until approximately mid-September 1993, and between 21 September 1993 and the first

half of March 1994.

16. The Prosecution listed and summarized witness testimony in its closing brief that allegedly confirmed that the incidents charged against the Accused Dautović, Gasal and Kukavica in the Amended Indictment occurred in the manner described therein.

17. The Prosecution explained their legal theory in their closing oral arguments. Specifically, the Prosecution discussed the joint criminal enterprise alleged in the Amended Indictment, whereby captured men of Croat ethnicity, including members of the Bugojno HVO who laid down their arms and surrendered, and civilians, including women, children and elderly persons of Croat ethnicity, who surrendered together with the HVO members were incarcerated and detained on inadequate premises, tortured and murdered (particularly those considered extremists), forced to perform labor, and treated in an inhumane and cruel manner. The Prosecution emphasized the journal of Dževad Mlaćo,² the Chairman of the Bugojno Municipality Wartime Presidency, which the Prosecution submitted contained the plan of the joint criminal enterprise and its members. The Prosecution believes that Dževad Mlaćo put the plan together and assigned tasks. Further, the Prosecution alleged that the Accused Gasal and Kukavica were “small fish” and that the Accused Dautović was a “big fish” responsible for executing the plan.

18. The Accused Dautović is alleged to have been heavily involved in the plan, and to have acted out his role accordingly. The Prosecution submitted that HVO members surrendered to the Accused Dautović because they trusted him, but that HVO members who surrendered were held in inhumane conditions, beaten, denied adequate medical assistance and forced to donate blood. The Prosecution submitted that prisoners were used at the front lines. Some of these prisoners were killed; some remains were found but others have not been located.

19. Based on the above, the Prosecution submitted that the plan was executed to its full extent and that all of the Accused were responsible, but that the Panel must decide the degree of responsibility.

² T-640 (Dževada Mlaćo's journal).

20. The Panel notes that the documents, video and pictures shown by the Prosecution during their closing arguments were not placed into evidence. These items were therefore not considered by the Panel as relevant evidence.

2. Closing arguments of the Defense for the Accused Nisvet Gasal

21. The Defense for Accused Nisvet Gasal submitted that the Prosecution lacked evidence to corroborate its theory that Accused Senad Dautović sent Nisvet Gasal, a member of the SJB Bugojno, to the Stadium as a warden on 21 September 1993, and that Gasal was sent for the purpose of carrying out the Joint Criminal Enterprise (“JCE”). Further, the Defense noted that a decision appointing Gasal warden, particularly a decision signed by Dautović, does not exist. Indeed, the Defense argued to the contrary that the Accused was subordinate to the Command of the 307th Brigade, specifically the Military Security and the top man Enes Handžić, and that the 307th Brigade was subordinate to OG West.

22. Pursuant to Count 10(a) of the Amended Indictment, the Defense submitted that the prison was under military control, and that guards had always been subordinated to the Military Police Commander. The Defense also submitted that the takeover of duty was never effected, and that the Accused never received written or verbal instructions related to the treatment of prisoners.

23. With respect to the conditions in the Stadium, the Defense noted that the examination of a number of witnesses, including Prosecution witnesses, confirmed that the 307th Brigade Command was in charge of food for prisoners of war, whereas Nisvet Gasal, in his capacity of warden from late September 1993 onwards, did his best to provide the best possible conditions within the scope of possibilities in Bugojno.

24. The Defense does not dispute that prisoners were kept in inhumane conditions but argued that these conditions needed to be evaluated in two separate time segments. Prosecution witnesses testified that conditions under Meho Sadiković were the most harsh, as prisoners under his control were beaten, taken to perform forced labor, disappeared and subjected to other unlawful acts. The second time period corresponds to the arrival of Gasal in late September 1993, and the Defense pointed out that it was primarily Prosecution witnesses who stated that the

situation significantly improved after his arrival. Living conditions also improved in the blocked town of Bugojno.

25. Specifically, the Defense noted that after the arrival of Gasal, the problem of overcrowded rooms was solved by the construction of additional bunk beds, that sanitary conditions improved as prisoners were permitted to go to their family houses in town and take a bath, that four pit latrines were built and a water tank brought in, that the number of meals increased, and that prisoners received parcels of food, clothes, footwear and blankets from their relatives, friends, Nun Pavka and members of the clergy. Furthermore, the Defense contested the Prosecution's allegation that necessary medical care was not provided. The Defense submitted that while Gasal was the warden, medical aid was timely, adequate and administered to those in need.

26. With respect to the Prosecution's allegation that Gasal did not take steps to resolve the prisoners' status, the Defense submitted that the Accused had no role in the decision making processes associated with taking or releasing prisoners, and that the Military Security Service was in charge of releasing the prisoners and *de facto* did that by their orders to arrest, release or bring in prisoners.

27. The Defense contested the Prosecution's allegation under Count 10(b) of the Amended Indictment that Gasal had knowledge of and approved of the transfer of many prisoners from the FC *Iskra* Stadium to Musajb Kukavica and other camp guards to perform forced labor, and were thereby subjected to inhuman treatment. The Defense submitted that the prisoners were taken to perform labor immediately upon being brought to the stadium while Meho Sadiković was the warden. The Defense also listed Prosecution and Defense documentary evidence that they claimed confirmed that everyone but Gasal had input into the decision to take prisoners to engage in forced labor, and that the type of labor performed was decided by Order of the Military Organ. Any forced performance of labor that occurred while Gasal was warden was against his will, and lacked his consent or approval.

28. The Defense contested the allegation in Count 10(c) of the Amended Indictment, which relates to the torture of prisoners at the camp the BH Bank. Specifically, the Defense contested that Gasal was aware of but failed to take steps to prevent the torture, and that the Accused was aware that the prisoners named in Count 10(c) would be tortured as a result of his failure to act, and that he allegedly

could have prevented the torture if he had taken control of the keys to the rooms in which the captives were detained. The Prosecution had alleged that the Accused Gasal had failed to take necessary and reasonable measures to prevent torture, or punish or report his subordinates and other perpetrators.

29. The Defense submitted that the guards did not perceive Gasal as their superior, as they were not subordinate to him and Gasal lacked effective control over them. Moreover, while beatings did take place in August and September 1993, the beatings stopped once Gasal arrived. The two beating incidents that did occur while Gasal was warden were either handled by the competent Command, which dismissed the so-called MUP shift in charge, or took place on the eve of the exchange when one of the prisoners was visibly inebriated and insulted a guard, and accordingly did not need to be addressed, as all prisoners were exchanged and staff dismissed the next day.

30. The Defense noted that the transfer of prisoners to the BH Bank was organized and supervised by the military police and Military Security of the 307th Brigade. The Defense also pointed out that the prisoners were taken from locations where they were performing labor and from their homes, and that all trace of them was subsequently lost. The Defense submitted that some of these prisoners were unjustifiably and incorrectly linked with Nisvet Gasal, as they were brought to the BH Bank from other locations not within his area of responsibility and during a time when he did not exercise that responsibility.

3. Closing arguments of the Accused Nisvet Gasal

31. In Nisvet Gasal's closing arguments, the Accused reiterated what his Defense had stated in its closing brief and during the oral arguments. He emphasized that the detained individuals were not civilians, but were individuals who had laid down their arms and accordingly could be interned pursuant to the Fourth Geneva Convention of August 1949 and the Additional Protocols. Additionally, the Accused submitted that effective control implies authority to detain and release, and that he did not possess this authority. He additionally noted that he was powerless to prevent prisoners from being removed and that he was not at the Stadium in the evenings, and accordingly that he did not know that prisoners were taken away at night. Gasal

also reiterated that many of the witnesses had testified that the conditions at the Stadium had improved greatly once he became warden.

4. Closing arguments of the Defense for the Accused Musajb Kukavica

32. The Defense for Accused Musajb Kukavica did not dispute that the crime took place, but disputed the criminal liability of Kukavica and the legal qualification of the criminal offences charged against him. In regards to specific legal arguments, the Defense submitted that the offences at issue should be categorized as only war crimes against prisoners of war and not as war crimes against civilians, inasmuch as there exists in customary international law a distinction between civilians and combatants. The Defense submitted that prisoners held at the Stadium were exclusively part of the forces of the Croat Defense Council, and were not civilians.

33. The Defense also focused on the standard to be applied under the doctrine of command responsibility. The Defense submitted that ample evidence exists to corroborate that Kukavica was not authorized to perform the actions described in the Indictment. Finally, the Defense submitted that the indictment did not meet the requirements set forth in Article 227(1)(c) of the CPC of BiH.

34. The Defense argued that the prison warden and the commander of the guards had no influence on the decision as to where prisoners would be held, how prisoners would be treated or the manner in which food would be distributed to them, and therefore could not be held criminally responsible for the conditions in which detainees found themselves. The Defense also submitted that the prison administration had made visible efforts to improve the conditions of detainees held at the Stadium by, *inter alia*, securing blankets and materials for the expansion of the accommodation capacities, facilitating Red Cross assistance in the form of blankets, clothes and food, and permitting Nun Pavka to bring Caritas' assistance to prisoners.

35. The Defense submitted that allegations that Kukavica permitted guards at the Stadium and other members of the ARBIH to torture and abuse the prisoners, and that Kukavica participated in these incidents, were not supported by evidence. The Defense pointed out that all witnesses confirmed that Kukavica had treated the prisoners fairly, and none of the prisoners had testified that the Accused had abused and tortured them. Indeed, the Defense submitted that on several occasions the

Accused had enabled prisoners to contact their families, receive food and go home for a bath, and had generally treated the prisoners in a fair manner.

36. According to the Defense, the Prosecution did not provide any evidence that the Accused could have prevented or sanctioned the Stadium guards who abused the prisoners, inasmuch as the Accused did not have a superior-subordinate relationship to them. The Defense does not dispute that incidents of abuse occurred, but explained that upon learning of such incidents the Accused Kukavica took the step, in conjunction with the prison warden, of locking the room where prisoners were held at night and holding the keys in a safe place.

37. The Prosecution alleged that the Accused Kukavica had allowed some prisoners to be taken from the Stadium to the BH Bank, where they were tortured and physically abused, and that the Accused failed to take any action to prevent their transfer there or sanction those who tortured them. The Defense submitted that the evidence supports that the Command of the 307th Brigade of the ARBiH had exclusive authority over which prisoners would be removed from the camp, and that Kukavica was only following the orders of his superior command when he allowed some prisoners be taken to the BH Bank, which was, at that time, the seat of the Security Service of the 307th Brigade of the ARBiH and its Military Police unit. Further, the Defense submitted that Kukavica could not have known, at the time when prisoners were transferred, who was going to interview the prisoners or whether they would be ill-treated or physically abused during that interview.

38. Kukavica was also charged with permitting selected members of the HVO to be taken for forced labor, resulting in the lives of the prisoners being put in danger, wounds being inflicted on the prisoners, and the transfer of some prisoners to the BH Bank, from whence all trace of trace of them disappeared. The Defense submitted that Kukavica was the commander of one guard unit during the daytime working hours. With respect to the removal of prisoners for forced labor, including the work they performed that fortified the defense position, the Defense submitted that, pursuant to the Geneva Conventions, the ARBiH had a right to use the prisoners for labor. Additionally, the Defense submitted that no evidence was presented that would confirm that prisoners were used as human shields against the enemy. Lastly, the Defense argues that, with respect to Kukavica being held responsible for

prisoners who disappeared, the Prosecution failed to prove that the Accused knew that prisoners taken from the camp premises would be tortured or disappeared.

5. Closing arguments of the Accused Musajb Kukavica

39. In his closing arguments, the Accused Musajb Kukavica reiterated his Defense's arguments, set forth in its closing brief and oral arguments.

6. Closing arguments of the Defense for the Accused Senad Dautović

40. The Defense for Accused Senad Dautović argued that the Prosecution had failed to prove that the Accused had fulfilled the necessary elements of the criminal offences charged or his criminal responsibility for the events that occurred during the war in BiH. In its closing brief the Defense set forth the positions that the Accused Dautović had held at certain times, the situation in which all citizens of Bugojno found themselves in the summer of 1993 and the causes that led to the situation.

41. The Defense submitted that the Prosecution had not proved that the Accused Dautović had command responsibility or was criminally responsible as a co-perpetrator in a JCE. The Defense argued that it would be a violation of Article 6(3)(a) of the European Convention of Human Rights ("ECHR") if the Accused Dautović were found guilty as a member of a JCE, inasmuch as JCE was not specifically plead and is not part of customary international law.

42. With respect to the international or non-international character of the conflict, the Defense pointed out that the Prosecution had not indicated the character of the conflict. The Defense also submitted that no one had been unlawfully detained, that individuals who surrendered were civilians and members of the HVO, and that there was justification to detain those persons and examine their roles. The civilians were immediately separated from the HVO members.

43. The Defense analyzed the elements of command responsibility and argued that Dautović lacked effective control, that he had only considered himself a superior of the civil police officers of his police station when they performed their regular police duties. The Defense also argued that the Prosecution had failed to prove that Dautović had sufficient information to conclude that his subordinates had committed

or could have committed a crime.

44. The Defense submitted that the ARBiH, specifically the 307th Brigade and its military security organ, had responsibility for and control over the captives. Further, the Defense argued that the Prosecution had failed to prove beyond a reasonable doubt that any person or entity had control over the prison and its guards.

45. The Defense provided legal arguments and evidence for each count and sub-count of the Amended Indictment, which they argued shows that the Accused Dautović is not guilty of the crimes for which he is accused.

7. Closing arguments of the Accused Senad Dautović

46. Senad Dautović, in his closing arguments, reiterated what his Defense had stated in its closing brief and during their oral arguments.

II. GENERAL CONSIDERATIONS OF EVIDENCE

A. EVALUATION OF EVIDENCE

47. The Court has assessed the evidence in accordance with the CPC of BiH, which permits the Panel, pursuant to Article 15 ('Free Evaluation of Evidence') and consistent with general principles of international criminal law,³ to "evaluate the existence or non-existence of facts" free from the restrictions imposed by "formal evidentiary rules". Article 15 is limited only by CPC of BiH Article 10, which proscribes the Panel from basing "its decision on evidence obtained through violation of human rights and freedoms prescribed by the Constitution and international treaties ratified by Bosnia and Herzegovina, or on evidence obtained through essential violation of this Code".

B. PRESUMPTIO INNOCENTIAE AND THE BURDEN OF PROOF

48. One of the most fundamental rules of criminal law is that an Accused is presumed innocent until guilt has been proved.⁴ At the international level, this principle has acquired *jus cogens* status by virtue of its explicit inclusion in the ICTY Statute (Article 21(3)), the ICTR Statute (Article 20(3)), the ICC Statute (Article 66(1)), the Special Court for Sierra Leone Statute (Article 17(3)), the Extraordinary Chambers in the Courts of Cambodia Statute (Article 35), the International Covenant on Civil and Political Rights (Article 14(2)), the Universal Declaration of Human Rights (Article 11(1)) and the ECHR (Article 6(2)). The principle has been incorporated into domestic law through Article II(2) of the Bosnian Constitution (pursuant to which Article 6(2) ECHR is to be applied directly by all Bosnian courts) as well as Article 3(1) of the CPC of BiH ('Presumption of Innocence

³ See e.g. *Prosecutor v. Blaskić*, IT-95-14-T, Judgment, 3 March 2000 ("*Blaskić* Trial Judgment"), para. 34 ("The principle [...] is one of extensive admissibility of evidence – questions of credibility or authenticity being determined according to the weight given to each of the materials by the Judges at the appropriate time").

⁴ *Mugdin Herceg*, AP 2313/05 (Const. Ct. of BiH) 6 July 2007, para. 45. *Vrdoljak*, X-KR-08/488 (Ct. of BiH), First Instance Verdict, 10 July 2008, pg. 12. *Trbić*, X-KR-07/386 (Ct. of BiH), First Instance Verdict, 16 October 2009, para. 55. See also *United States v. Krauch et al.* (The Farben Case), (Int'l Mil. Trib.) Decision and Judgment and Sentence, Green Series (Volume 8), p. 1107 (1948); R. May & M. Mierda, *International Criminal Evidence* (2002), p. 289.

and *In Dubio Pro Reo*). Accordingly, this Panel has considered the evidence with no “preconceived idea that the accused has committed the offence charged”.⁵

49. The implication of the *preumptio innocentiae* is that the Accused has no duty to prove his innocence. Rather, the burden of proof is placed squarely on the adverse party to the proceedings (the Prosecutor), who must prove the culpability of the accused beyond reasonable doubt.⁶ Accordingly, the Court is obliged to deliver an acquitting verdict not only when it is convinced of the accused’s innocence, but also when a reasonable doubt as to the guilt of the accused exists.⁷

C. CREDIBILITY AND RELIABILITY OF WITNESSES

50. In assessing the testimonial evidence adduced, the Panel has taken into account *inter alia* the witnesses demeanor, conduct and character, the internal consistency of the witnesses testimony, the degree of correlation between the witnesses testimony and other evidence submitted in the trial record, and any personal factors that might influence the testimony of the witnesses, including their possible involvement in the events and their relationship to the Accused.⁸

51. Many witnesses have testified to traumatic or repetitive events that occurred 14 years before their appearance before the Panel. Bearing this in mind, small differences and inconsistencies within and between the testimonies of witnesses are to be expected. Minor discrepancies will be therefore taken into account, but will not

⁵ *Branka Kolar-Mijatović*, AP-1262/06 (Const. Ct. of BiH) 23 November 2007, para. 34 citing *Barberà, Messegué and Jabardo v. Spain*, no. 10588/83, ECtHR, 6 December 1988, para. 77. See also *Herceg* Const. Ct. Decision, para 31.

⁶ *Herceg* Const. Ct. Decision, para. 31. See also *D.S.*, AP 1781/07 (Const. Ct. of BiH) 30 May 2009, para 45; *Karajić* First Instance Verdict, para. 314. *Tomić*, X-KRŽ-07/346 (Ct. of BiH), Second Instance Verdict, 27 May 2011, para. 17. See also *Barberà, Messegué and Jabardo v. Spain*; *John Murray v. United Kingdom*, no. 18731/91, ECtHR, 8 December 1996; Article 66(2) of the ICC Statute.

⁷ *Herceg* Decision, para. 31. See also *Karajić* First Instance Verdict, para. 314; *Tomić* Second Instance Verdict, 27 May 2011, para. 18; *Trbić* First Instance Verdict, para. 55.

⁸ *Karajić*, X-KR-07/336 (Ct. of BiH), First Instance Verdict, 13 April 2010, para. 61. See also *Savic*, X-KR-07/400 (Ct. of BiH), First Instance Verdict, 24 March 2009, para. 139; *Trbić*, X-KR-07/386 (Ct. of BiH), First Instance Verdict, 16 October 2009, paras 61 – 63; *Kurtović*, X-KR-06/299 (Ct. of BiH), First Instance Verdict, 30 April 2008, p. 20; *Samardžija*, X-KR-05/07 (Ct. of BiH), First Instance Verdict, 3 November 2006, p. 15.

prompt the Panel to automatically dismiss the testimony of a particular witness as discredited or unreliable.⁹

52. Moreover, while the Panel will take into account discrepancies between the testimonies of multiple witnesses or between various statements of one particular witness, inconsistency alone will not itself prompt the Panel to dismiss the entirety of a particular witness' testimony as unreliable.¹⁰ The Panel may find a witness to be credible and reliable with respect to some aspects of their testimony and not credible or reliable with respect to others.¹¹

D. CIRCUMSTANTIAL EVIDENCE

53. As a general principle of international law, proof may be administered by means of circumstantial evidence - "evidence of circumstances surrounding an event or offence from which a fact at issue may be reasonably inferred"¹² - if objective obstacles prevent the party that bears the burden of proof from gathering direct evidence that supports his or her claim.¹³ In the context of international criminal law,

⁹ *Karajic* First Instance Verdict, para. 60. See also *Prosecutor v. Simic*, IT-95-9-T, Judgment, 17 October 2003 ("*Simic* Trial Judgment"), para. 22; *Savic* First Instance Verdict, para. 141 – 42; *Trbic* First Instance Verdict, para. 59. *Kurtovic* First Instance Verdict, p. 20.

¹⁰ *Prosecutor v. Celebici*, IT-96-21-A, Judgment, 20 February 2001 ("*Celebici* Appeal Judgment"), para. 496. See also *Trbic* First Instance Verdict, para. 64.

¹¹ *Prosecutor v. Kupreskic*, IT-95-16-A, Judgment, 23 October 2001 ("*Kupreskic* Appeals Judgment"), para. 333. See also *Trbic* First Instance Verdict, para. 64; *Stevanovic*, X-KR-05/24-2 (Ct. of BiH), First Instance Verdict, 29 July 2008, pgs 10 – 11.

¹² *Prosecutor v. Brdjanin*, IT-99-36-T, Judgment, 1 September 2004 ("*Brdjanin* Trial Judgment"), para. 35 citing *Criminal Evidence* (3rd Ed.), Richard May, London: Sweet & Maxwell, 1995. See also *Prosecutor v. Delic*, IT-04-83-T, Decision Adopting Guidelines on the Admission and Presentation of Evidence and Conduct of Counsel in Court, 24 July 2007 ("*Delic* Admission Decision"), para. 34, citing Richard May & Stephen Powell, *Criminal Evidence* (5th ed.) (Sweet & Maxwell Ltd) (2004); *Trbic* First Instance Verdict, para. 68 ("Direct evidence comprises those pieces of evidence that directly establish a disputable fact. Indirect evidence is used to establish the veracity of a disputable fact through other facts").

¹³ *Corfu Channel Case (United Kingdom v. Albania)*; *Merits*, International Court of Justice (ICJ), 9 April 1949, ICJ Reports 1949, p. 18 (concluding that "[...] the victim of a breach of international law is often unable to furnish direct proof of facts giving rise to responsibility. Such a state should be allowed a more liberal recourse to inferences of fact and circumstantial evidence"); *Arbitration on Delimiting Abyei Area between the Government of Sudan and the Sudan People's Liberation Movement/Army; Final Award*, Permanent Court of Arbitration (PCA), 22 July 2009, para. 534 (recognizing that "much of the evidence in this case is marked, in varying degrees, by some imprecision and is often circumstantial, and to that extent, the subjective assessment necessary when evaluating such evidence can be taken into account"); *Timurtaş v. Turkey*, no. 23531/91, ECtHR, 13 June 2000, para. 166 (finding that "[w]hether the failure on the part of the authorities to provide a plausible explanation as to a detainee's fate, in the absence of a body, might also raise issues under Article 2 of the Convention will depend on all the circumstances of the case, and in particular on the existence of sufficient circumstantial evidence, based on concrete elements, from

this principle has been confirmed by international tribunals as diverse as the International Criminal Court,¹⁴ the International Criminal Tribunal for the former Yugoslavia,¹⁵ the International Criminal Tribunal for Rwanda,¹⁶ the Special Court for Sierra Leone,¹⁷ and the Extraordinary Chambers in the Courts of Cambodia.¹⁸ The War Crimes Court of Bosnia and Herzegovina has also consistently given effect to this principle in the process of considering and weighing evidence.¹⁹

54. Circumstantial evidence has probative value equal to that of direct evidence.²⁰ While individual pieces of circumstantial evidence may be insufficient to establish a fact, when considered collectively and cumulatively they may form “strong links in a

which it may be concluded to the requisite standard of proof that the detainee must be presumed to have died in custody [...]”).

¹⁴ See e.g. *Prosecutor v. Kony et al.*, ICC-02-04, Decision on victims' applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06 to a/0104/06 and a/0111/06 to a/0127/06, 10 August 2007, para. 15 (citing to *Corfu Channel* for the proposition that “It is also accepted as a general principle of law that ‘indirect proof’ (i.e. inferences of fact and circumstantial evidence) is admissible if it can be shown that the party bearing the burden of proof is hampered by objective obstacles from gathering direct proof of a relevant element supporting his or her claim; the more so when such indirect evidence appears to be based ‘on a series of facts linked together and leading logically to a single conclusion’”).

¹⁵ See e.g. *Prosecutor v. Drazen Erdemovic*, Joint Separate Opinion of Judge McDonald and Judge Vohrah, 7 October 1997, (“*Erdemovic Appeals Judgment*”), para. 57 (incorporating the *Corfu Channel* principle into the jurisprudence of the ICTY); *Prosecutor v. Delalić et al.*, IT-96-21-A, Judgment, 20 February 2001 (“*Delalić Appeals Judgment*”), para. 458.

¹⁶ See e.g. *Prosecutor v. Kamahunda*, ICTR-99-54A-A, Judgment, 19 September 2005 (“*Kamahunda Appeals Judgment*”), para. 241; *Gacumbitsi v. Prosecutor*, ICTR-2001-64-A, Judgment, 7 July 2006 (“*Gacumbitsi Appeals Judgment*”), para. 115.

¹⁷ See e.g. *Prosecutor v. Fofana et al.*, SCSL-04-14-A, Judgment, 28 May 2008 (“*Fofana Appeals Judgment*”), paras 198-200; *Prosecutor v. Brima et al.*, SCSL-04-16-T, Judgment, 20 June 2007 (“*Brima Trial Judgment*”), para. 109.

¹⁸ See e.g. *Prosecutor v. Kaing Guek Eav (alias Duch)*, No. 001/18-07-2007/ECCC/TC, Judgment, 26 July 2010, para. 43.

¹⁹ See e.g. *Dukić*, X-KR-07/394 (Ct. of BiH), First Instance Verdict, 12 June 2009, p. 38 (noting that “the Panel found certain relevant facts from the Indictment on the basis of indirect evidence – circumstantial evidence”); *Dukić*, X-KR-07/394 (Ct. of BiH), Second Instance Verdict, 6 April 2010, para. 75 (“Contrary to the arguments raised on appeal, the Trial Panel properly reached its conclusion through circumstantial evidence that we deem sufficient to establish with certainty that the Accused is guilty of the criminal offense with which he is charged”); *Trbić* First Instance Verdict, para. 66 (“This case has an ample amount of evidence that indicate certain circumstances which, when combined, refer to the existence of specific facts on which rests the guilt of the Accused”); *Savić* First Instance Verdict, paras. 144 - 145; *Kovać*, X-KR-08/489 (Ct. of BiH), First Instance Verdict, 10 July 2009, para. 17.

²⁰ *Brdjanin* Trial Judgment, para. 35 citing *Taylor, Weaver and Donovan* (1928) 21 Cr. App. R. 20, 21 (asserting that “it is no derogation of evidence to say that it is circumstantial”). See also *Kupreškić Appeals Judgment*, para. 303 (“there is nothing to prevent a conviction being based upon [circumstantial] evidence”); *Trbić* First Instance Verdict, para. 68 (“In accordance with the principle of free evaluation of evidence, the relevant facts can be established during the main trial through direct and indirect-circumstantial evidence”); *M.Š.*, AP-661/04 (Const. Ct. of BiH) 22 April 2005, para. 36; *Hasića*, AP 5/05 (Const. Ct. of BiH) 14 March 2006, para. 31 (“Moreover, the facts that the ordinary courts should establish could be proved by indirect and circumstantial evidence – indications”).

chain of circumstantial evidence”²¹ that are “revealing and decisive”.²² Trial Chamber II of the ICTY, using language taken from the English Courts, described this effect thusly:

It has been said that circumstantial evidence is to be considered [...] like the case of a rope comprised of several cords. One strand of the cord might be insufficient to sustain the weight, but three stranded together may be quite of sufficient strength. Thus it may be in circumstantial evidence - there may be a combination of circumstances, no one of which would raise a reasonable conviction or more than a reasonable suspicion; but the three taken together may create a conclusion of guilt with as much certainty as human affairs can require or admit of.²³

55. The Constitutional Court of BiH has affirmed that reliance on circumstantial evidence is not contrary to the fair trial principles enshrined in ECHR Article 6(1), but noted that any indirect evidence relied upon must “act as firm, closed circle, allowing only one conclusion in relation to the relevant facts”.²⁴ Pursuant to this, circumstantial evidence has been relied upon by the Trial and Appellate Panels, as well as the various ICTY Trial and Appeals Chambers, to establish a fact or the existence of a crime,²⁵ link an accused to the crime charged,²⁶ and deduce an

²¹ *Prosecutor v. Naletilic et al.*, IT-98-34-T, Judgment, 31 March 2003 (“*Naletilic* Trial Judgment”), para. 504 affirmed by *Prosecutor v. Naletilic et al.*, IT-98-34-A, Judgment, 3 May 2006 (“*Naletilic* Appeal Judgment”), para. 516.

²² *Brdjanin* Trial Judgment, para. 35. See also *Todorović et al.*, X-KRŽ-07/382 (Ct. of BiH), Second Instance Verdict, 17 February 2009, para. 89 (asserting that “circumstantial evidence, like the separate pieces of a puzzle when all put together, can be more compelling than direct eyewitness testimony, which can be subject to normal human error”); *Lalović*, X-KR-05/59 (Ct. of BiH), First Instance Verdict, 16 June 2010, para. 126 (“If taken separately, such pieces of evidence may be insufficient *per se*. However, if viewed in its entirety, the collective and the cumulative character of the evidence can be disclosing and sometimes crucial”); *Savić* First Instance Verdict, para. 145. *Prosecutor v. Orić*, IT-03-68-T, Order Concerning Guidelines on Evidence and the Conduct of Parties during Trial Proceedings, 21 October 2004 (“*Orić* Guidelines Decision”), § 2, para. 9.

²³ *Brdjanin* Trial Judgment, para. 35 fn 40 citing *Exall* (1866) 4 F. & F. 922, 929. The *Delalić* Appeals Chamber articulated this principle slightly differently, concluding that “a circumstantial case consists of evidence of a number of different circumstances which, taken in combination, point to the guilt of the accused person because they would usually exist in combination only because the accused did what is alleged against him”. *Delalić* Appeals Judgment, para. 458.

²⁴ *M.Š.*, AP-661/04 (Const. Ct. of BiH) 22 April 2005, para. 36; *Hasića* Const Ct. Decision, para. 31. See also *Trbic* First Instance Verdict, para. 70 citing Supreme Court of Croatia, Kž 1744/68 (1968); *Dukic* First Instance Verdict, para. 129 citing Commentary on the Criminal Procedure Code of BiH, pg. 716. The ECtHR has itself relied on circumstantial evidence in the course of adjudicating the claims that have come before it. See e.g. *Cakici v. Turkey*, no. 23657/94, ECtHR, 8 July 1999, para. 85.

²⁵ See e.g. *Mejakić*, X-KRŽ-06/200 (Ct. of BiH), Second Instance Verdict, 16 February 2009, para. 89 (relying on circumstantial evidence for the proposition that the Accused was in command during a particular guard shift); *Kujundžić*, X-KR-07/442 (Ct. of BiH), First Instance Verdict, 30 October 2009, paras. 383 - 385. See also *Prosecutor v. Martić*, IT-95-11-A, Judgment, 8 October 2008 (“*Martić* Appeals Judgment”), paras 255, 259-261 (endorsing the Trial Chamber’s finding that the shelling of Zagreb to amount to a widespread attack directed against a civilian population “due to the characteristics of the weapon used and the large-scale nature of the attack [...]”); *Prosecutor v. Krnojelac*, IT-97-25-T, Judgment, 15 March 2002

accused's *mens rea* or form of participation.²⁷ In some cases, circumstantial evidence alone has formed the basis for a factual determination or conviction.²⁸ In other cases, circumstantial evidence has been used to corroborate additional testimonial or documentary evidence.²⁹

E. REBUTTAL EVIDENCE

56. Rebuttal evidence is allowed under Article 261 of the CPC of BiH. After the evidence of the prosecution and the defense is presented, rebutting evidence of the prosecution is allowed. This may be followed by evidence in rejoinder by the defense. On 11 February 2011, the prosecutor filed a motion to present rebuttal evidence. Although this motion was filed three years after the start of trial, it was filed in a timely manner following the defense presentation of evidence. The prosecution had already called 80 live witnesses and submitted 647 documents on their behalf. In its motion the Prosecution asked to examine 16 more witnesses (eight of whom

(“*Krnjelac* Trial Judgment”), para. 326; *Prosecutor v. Kvočka et al.*, IT-98-30/1-A, Judgment, 28 February 2005 (“*Kvočka* Appeal Judgment”), para. 260. Circumstantial evidence may also be used to demonstrate the *actus reus* of rape. See *Prosecutor v. Muhimana*, ICTR-95-1B-A, Judgment, 21 May 2007 (“*Muhimana* Appeals Judgment”), para. 49.

²⁶ See e.g. *Stupar*, X-KR-05/24 (Ct. of BiH), First Instance Verdict, 29 July 2008, p. 153 (“Awareness of the crimes can [...] also be proven by circumstantial evidence”). See also *Prosecutor v. Strugar*, IT-01-41-T, Judgment, 31 January 2005, (“*Strugar* Trial Judgment”), para. 343 (inferring from circumstantial evidence the awareness of the Accused that his order “to attack Srdj necessarily also involved the prospect that his forces might well have need to shell any Croatian artillery and other military positions [...]”); *Dukić* First Instance Verdict, paras 199, 363 citing *Prosecutor v. Limaj et al.*, IT-03-66-T, Judgment, 30 November 2005, (“*Limaj* Trial Judgment”), para. 515.

²⁷ See e.g. *Stupar* First Instance Verdict, p. 142 (acknowledging that “[e]vidence of effective control can be direct or circumstantial”). See also *Savić*, First Instance Verdict, para. 171; *Prosecutor v. Kvočka et al.*, IT-98-31/1-T, Judgment, 2 November 2001 (“*Kvočka* Trial Judgment”), para. 324 (holding that “[k]nowledge of the joint criminal enterprise can be inferred from such indicia as the position held by the accused, the amount of time spent in the camp, the function he performs, his movement throughout the camp, and any contact he has with detainees, staff personnel, or outsiders visiting the camp”); *Prosecutor v. Jelisić*, IT-95-10-A, Judgment, 5 July 2005 (“*Jelisić* Appeal Judgment”), para. 47 (noting that “proof of specific intent...may, in the absence of direct explicit evidence, be inferred from a number of facts and circumstances, such as the general context [...]”); *Prosecutor v. Blaškić*, IT-95-14-A, 29 July 2004 (“*Blaškić* Appeal Judgment”), para. 56 (affirming the Trial Chamber’s reliance on circumstantial evidence to establish superior knowledge).

²⁸ See e.g. *Naletilić* Appeal Judgment, para 492; *Kupreškić* Appeals Judgment, para. 303 (noting that “there is nothing to prevent a conviction being based upon [circumstantial] evidence”); *Prosecutor v. Galic*, IT-98-29-T, Judgment, 5 December 2003, (“*Galic* Trial Judgment”), para. 747; *Prosecutor v. Stakić*, IT-97-24-A, Judgment, 22 March 2006, (“*Stakić* Appeal Judgment), para. 224.

²⁹ See e.g. *Savić* First Instance Verdict, para. 286; *Trbić* First Instance Verdict, para 471; *Strugar* First Instance Verdict, para 89; *Karajić* First Instance Verdict, para. 62 (noting that it is the practice of the Court of BiH to evaluate circumstantial evidence combined “with the evidence of other witnesses and eyewitnesses taken as a whole”). See also *Prosecutor v. Kordić and Čerkez*, IT-95-14/2-A, Judgment, 17 December 2004 (“*Kordić* Appeals Judgment”), para. 276 (“It is incorrect to suggest that circumstantial

required protective measures) and to read out the ICTY statement of a previously summoned defense witness. The Prosecution also provided a brief explanation of what the Prosecution intended to prove by these witnesses.

57. The Trial Panel carefully examined the reasoning for the proposed witness, but was unable to conclude that any of their testimony met the definition of rebuttal evidence. Rebuttal evidence has a specific and narrow purpose; it is used to rebut new evidence or new theories presented in the defendant's case in chief at the main trial. It is not limited to facts that the Prosecution could not have introduced during their case in chief. There must, however, be a concrete reason for the admission of the evidence and this reason must be linked to the Defense's prior presentation. The Trial Panel is afforded discretion as to which evidence it will allow. Testimony offered only to lend additional support to an argument presented in its case in chief that does not contradict, impeach or significantly lessen the impact of the evidence offered by the adverse party, is not properly admitted on rebuttal. Evidence at this stage in the proceedings cannot be cumulative.

58. With these factors in mind, the court reviewed all of the proposed witnesses. The Trial Panel rejected 15 of the proposed witnesses on the basis that their testimony would be cumulative. For example, the Prosecution justified its proposed admission of the testimony of Witness No. 7 on the grounds that it would show that beatings occurred at the BiH bank. But the Prosecution and Defense had already submitted evidence to this effect, and the rebuttal evidence is simply cumulative and therefore, in the eyes of this Panel, unnecessary. The 16th witness was rejected as irrelevant and not probative of a fact in dispute.

59. The proposal to have the statement of Selmo Cikotić read was initially granted by this Panel. The Defense objected and requested that the witness be summoned to reappear before the Panel. The Prosecution subsequently withdrew its motion. The Trial Panel ultimately decided that Selmo Cikotić's testimony would benefit from further clarification, and accordingly summoned the witness *ex officio* and all parties were given an opportunity to examine the witness.

evidence cannot be regarded as corroborative"); *Prosecutor v. Galic*, IT-98-29-A, Judgment, 30 November 2006 ("Galic Appeal Judgment"), paras 221-223.

F. ADDITIONAL EVIDENCE

60. On 30 May 2011 the Prosecution filed a request to hear seven witnesses as additional evidence. The standard for additional evidence at this stage in the proceedings (over three and a half years post-indictment) is high. The Trial Panel has discretion to admit additional evidence pursuant to Article 276 of the CPC of BiH. The commentaries explain that;

After the presentation of all evidence of the parties and the Court, the judge or the presiding judge asks the parties and the defense attorney if they have any other motion for the presentation of evidence. If they do, the Court will decide whether or not to accept the motion. If the motion is accepted, the main trial will be adjourned, that is, a recess of the main trial will be declared for the purpose of obtaining new evidence and for the Prosecution, and/or Defense to make preparations.

61. It is clear that, at this stage of the proceedings, the decision to allow evidence is discretionary with the Panel.

62. In this instance there were no exceptional circumstances that would justify the admission of evidence at this late stage of the proceeding. The Prosecution failed to show that the evidence was not available to them during the main trial and that it could not have been produced, despite their due diligence, during their case in chief.³⁰ The offering party should demonstrate that the proffered evidence was unavailable to him at trial in any form and that all avenues to compel production were utilized. The proposed evidence was evaluated by the Panel for its relevance and probative value; evidence that is merely cumulative can be excluded. Moreover, at this stage of the proceedings additional evidence cannot be admitted if it is the sole convicting evidence or is offered to support a new theory of liability or to supplement prior evidence. A Panel that faces a proposal for the admission of additional evidence must also take into account the length of the trial and the preceding investigation. With these factors in mind the Trial Panel carefully examined all motions for the examination of witnesses. After carefully reviewing the proffered evidence, the Trial Panel has determined that the proposed evidence is irrelevant, cumulative and unnecessary, untimely or inherently unreliable as presented.

³⁰ The Trial Panel notes this requirement is not a factor for rebuttal evidence.

Therefore the Panel has refused the motion of the Prosecutor and brought the trial to a close.

G. PROSECUTION AND DEFENSE OBJECTIONS TO THE DOCUMENTARY EVIDENCE

63. In the course of the main trial the Prosecution and the Defense raised objections to the authenticity, lawfulness and relevance of certain documentary evidence.

1. Objections to the Prosecution's documentary evidence

(a) Objections as to the authenticity

64. Defense objected to the authenticity of the following exhibits: T-5, T-6, T-8, T-9, T-10, T-11, T-18, T-20, T-33, T-35, T-38a –T-38d, T-51, T-64, T-65, T-158, T-168, T-179, T-200, T-222, T-251, T-254, T-255, T-311, T-321, T-462, T-520, T-521, T-572, T-584, T-612, T-617, T-618 and T-625.

(b) Objections as to the relevance

65. Defense objected to the relevance of the following exhibits: T-136, T-159, T-174, T-204, T-224, T-267, T-554 and T-594.

(c) Objections as to the lawfulness

66. Defense objected to the lawfulness of the following exhibits: T-5, T-6, T-8, T-9, T-10, T-11, T-195, T-200, T-204, T-208, T-212, T-213, T-214, T-215, T-220, T-224, T-232, T-236, T-334, T-340, T-365, T-370, T-374, T-389, T-401, T-450, T-523, T-524 and T-625.

67. After the objection as to the authenticity of exhibit T-159 the Prosecution withdrew this piece of evidence. The Panel returned exhibits T-572, T-573 and T-582 to the Prosecution with the instruction that they should certify these documents and then submit them to the Court. These documents were assigned a court number in case the Court receives them in certified form.

68. The Panel received exhibits T-179, T-285, T-299, T-341, T-365, T-478, T-515,

T-586, T-612, T-617, T-618 and T-625 into the case-file as documents but did not admit them into evidence.

69. The Defense objected to the authenticity, relevance and lawfulness of the above documents. The Prosecution had the opportunity to respond to these objections and subsequently to submit the required evidence pertaining to these objections, but failed to do so.

2. Objections to the evidence of the Defense for the Accused Senad Dautović

(a) Objections as to the authenticity

70. The Prosecution objected to the authenticity of the following exhibits of the Defense for the Accused Senad Dautović: O-45/4, O-46/4, O-108/4, O-110/4, O-111/4, O-112/4, O-113/4, O-114/4, O-115/4, O-115/4, O-163/4, O-169/04, O-213/4, O-214/4, O-215/4, O-241/4, O-252/4, O-255/4, O-257/4, O-263/4, O-282/4, O-296/4, O-303/4, O-305/4, O-306/4, O-308/4, O-309/4, O-315/4 and O-316/4.

(b) Objections as to the lawfulness

71. The Prosecution objected to the lawfulness of the following exhibits of the Defense for the Accused Senad Dautović: O-36/4, O-37/4, O-38/4, O-39/4, O-44/4, O-49/4, O-50/4, O-56/4, O-63/4, O-75/4, O-76/4, O-77/4, O-78/4, O-100/4, O-101/4, O-102/4, O-103/4, O-104/4, O-106/4, O-107/4, O-109/4, O-110/4, O-111/4, O-112/4, O-113/4, O-114/4, O-115/4, O-162/4, O-163/4, O-164/4, O-165/4, O-166/4, O-167/4, O-181/4, O-182/4, O-183/4, O-184/4, O-185/4, O-187/4, O-191/4, O-203/4, O-205/4, O-206/4, O-207/4, O-208/4, O-209/4, O-212/4, O-236/4, O-241/4, O-244/4, O-246/4, O-247/4, O-255/4, O-263/4, O-292/4, O-295/4, O-302/4, O-305/4, O-308/4, O-309/4, O-315/4, O-316/4, O-317/4, O-318/4, O-319/4, O-320/4, O-321/4, O-322/4, O-323/4, O-324/4, O-325/4 and O-331/4.

(c) Objections as to the relevance

72. The Prosecution objected to the relevance of the following exhibits of the Defense for the Accused Senad Dautović: O-43/4, O-46/4, O-47/4, O-49/4, O-50/4, O-51/4, O-52/4, O-53/4, O-54/4, O-55/4, O-56/4, O-57/4, O-58/4, O-59/4, O-60/4,

O-61/4, O-62/4, O-63/4, O-64/4, O-65/4, O-66/4, O-67/4, O-68/4, O-69/4, O-70/4, O-71/4, O-72/4, O-73/4, O-74/4, O-75/4, O-76/4, O-77/4, O-79/4, O-80/4, O-81/4, O-82/4, O-83/4, O-84/4, O-85/4, O-86/4, O-87/4, O-88/4, O-89/4, O-90/4, O-91/4, O-92/4, O-93/4, O-94/4, O-95/4, O-96/4, O-97/4, O-98/4, O-99/4, O-100/4, O-101/4, O-102/4, O-103/4, O-104/4, O-106/4, O-107/4, O-108/4, O-210/4, O-211/4, O-213/4, O-215/4, O-216/4, O-217/4, O-218/4, O-219/4, O-220/4, O-221/4, O-222/4, O-223/4, O-224/4, O-225/4, O-226/4, O-227/4, O-228/4, O-229/4, O-230/4, O231/4, O-232/4, O233/4, O-234/4, O-235/4, O-236/4, O-237/4, O-238/4, O-239/4, O-240/4, O-241/4, O-242/4, O-243/4, O-244/4, O-245/4, O-246/4, O-247/4, O-248/4, O-249/4, O-250/4, O-251/4, O-252/4, O-253/4, O-254/4, O-255/4, O-256/4, O-257/4, O-258/4, O-259/4, O-260/4, O-261/4, O-262/4, O-263/4, O-264/4, O-265/4, O-266/4, O-267/4, O-268/4, O-269/4, O-270/4, O-271/4, O-272/4, O-273/4, O-274/4, O-275/4, O-276/4, O-277/4, O-278/4, O-279/4, O-280/4, O-281/4, O-282/4, O-286/4, O-307/4, O-310/4, O-311/4, O-312/4, O-313/4, O-314/4, O-318/4, O-319/4, O-320/4, O-321/4, O-322/4, O-323/4, O-324/4, O-325/4, O-326/4 and O-327/4.

73. The Prosecution tendered exhibits T-131, T-132, T-133 and T-134 (statements of witnesses Tomislav Mikulić, Mijo Marijanović, Marko Krajinović and Dragan Keškić). The Defense counsel initially objected to these being admitted in to evidence without the opportunity to cross examine witnesses. Thereafter the Panel held status conferences to discuss the presentation of the Defense's evidence. However, on these occasions Defense did not move for cross examination of these witnesses, did not insist on their summoning, nor did they request from the court to take action to have these witnesses appear before the court. The Panel therefore finds that the Defense has no interest in cross-examination of these witnesses and has admitted their statements into the record pursuant to the law.

(d) Consideration by the Court

74. Having reviewed the proposed evidence and arguments made by the parties and defense attorneys, the Panel decided that the Defense and Prosecution objections to the documentary evidence were unsubstantiated and that the documentary evidence be admitted into the case-file.

75. Article 15 of the CPC of BiH prescribes the principle of free evaluation of

evidence as one of the basic principles. According to this article “[t]he right of the Court, Prosecutor and other bodies participating in the criminal proceedings to evaluate the existence or non-existence of facts shall not be related or limited to special formal evidentiary rules”. Therefore, the value of evidence is not predetermined either in qualitative or quantitative terms. The Court is obliged to evaluate each piece of evidence individually and in combination with other evidence and then based on the results of such evaluation, infer whether a fact has been proven or not. Evidence is evaluated based on its credibility and its probative value. However, free evaluation of evidence is limited by the principle of the legality of evidence (Article 10 of the CPC of BiH).

76. Article 10 of the CPC of BiH stipulates that “[t]he Court may not base its decision on evidence obtained through violation of human rights and freedoms prescribed by the Constitution and international treaties ratified by Bosnia and Herzegovina, nor on evidence obtained through essential violation of this Code [...]”.

77. The ECtHR has established a general rule to be followed by national courts in the evaluation of evidence. In light of the fact that there is no explicit provision in the Convention on the evaluation of evidence, the ECtHR declined to set specific rules of evidence, but determined this to be a matter regulated by national legislation, but established that the European Court would review cases on the grounds of whether the national court proceedings as a whole were fair. When considering whether the trial was fair, the European Court will inquire into the manner in which the evidence was obtained, if there were violations of Convention rights, and if so will further inquire into the nature of those violations. Special attention will be given to the issue of whether the convicting judgment is based exclusively, or for the most part, on contested evidence and whether the rights of the defense have been sufficiently respected.

78. The Panel holds that the parties and the defense attorneys failed to adduce concrete facts or circumstances pursuant to which the impugned evidence could be excluded from the present criminal proceedings. The Panel also holds that the Defense and Prosecution objections were presented arbitrarily. In other words, objections concerning particular documentary evidence were raised without substantiating these objections any further by the end of the trial.

79. Further, with respect to objections concerning authenticity and lawfulness, the Panel has not detected any modification or redaction indicating that the documents in question were not copies of original documents. As for objections to the relevance, the fact that certain documents do not refer to the time period material to the Indictment does not necessarily mean that they are not relevant for understanding this criminal case. Therefore, all contested exhibits were admitted as relevant and subsequently assessed, inasmuch as the Panel found them to be authentic and lawful pursuant to the terms of Article 15 of the CPC of BiH.

80. Based on the foregoing, the Panel decided to refuse these objections as to the authenticity, relevance and lawfulness of the documentary evidence as unfounded.

III. BACKGROUND - HISTORY OF THE CONFLICT

81. The Republic of Bosnia and Herzegovina (“RBiH”) was recognized by the European Community on 6 April 1992 and by Croatia on 7 April 1992. It was admitted as a Member State of the United Nations on 22 May 1992.³¹

82. On 18 November 1991, the Croatian Community of Herceg-Bosna (“HZ H-B”) proclaimed its independence. The Community never gained international recognition. On 9 January 1992, the Bosnian Serb Assembly proclaimed the Serb Republic of Bosnia and Herzegovina.³²

83. On 8 April 1992, with the establishment of the Republic of Bosnia and Herzegovina, the General Staff of the Territorial Defense (“TO”) of the RBiH was created and the former General Staff of the SFRY TO was disbanded. The Presidency of the RBiH announced the state of an impending threat of war.

84. The same day, the Presidency of the HZ H-B decided to establish the Croatian Defense Council as the “supreme defense body of the Croat people” in HZ H-B.³³

85. On 23 June 1992 the RBiH Army was created by decision of the Presidency of the RBiH to protect the Republic of Bosnia and Herzegovina in the ongoing conflict in its territory.³⁴

86. By presidential decision of 18 August 1992, the territory of the Republic of Bosnia and Herzegovina was to be divided into five different military areas of responsibility (‘corps’), with each reporting to the ARBiH Supreme Command Main Staff.³⁵

87. On 29 September 1992, pursuant to the Presidency Decision of 18 August 1992, the Supreme Command Main Staff ordered that the district TO staffs (OkŠO) be re-subordinated to the corps. Thus the OkŠO of Zenica and Banja Luka

³¹ *Prosecutor v. Hadžihasanović & Kubura*, IT-01-47-T, Judgment, 15 March 2006 (“*Hadžihasanović & Kubura* Trial Judgment”), Annex I.

³² *Hadžihasanović & Kubura* Trial Judgment Annex I..

³³ *Hadžihasanović & Kubura* Trial Judgment, Annex I.

³⁴ *Hadžihasanović & Kubura* Trial Judgment, Annex I.

³⁵ Established fact 319. *Gasal et al.*, Decision of 25 February 2011 to admit the established facts *ex officio* (in Section XII Part A, Procedural Decsion No. 2).

were subordinated to the 3rd Corps. The municipal defense staffs (OpŠO) were subordinated to the ARBiH units in their respective zones of responsibility. Because of combat operations in part of the territory of Bosnia and Herzegovina, the 3rd Corps zone of responsibility changed slightly and the 3rd Corps set up permanent headquarters in Zenica.³⁶

88. On 2 January 1993, the Vance-Owen Plan was presented at the International Conference for the Former Yugoslavia in Geneva. That peace plan proposed, *inter alia*, a decentralized Bosnia-Herzegovina, organized into ten provinces, each one retaining a substantial degree of autonomy. The plan was accepted by the Bosnian Croats but rejected by the Bosnian Serbs and Muslims.³⁷

89. The Panel adopted as established facts findings of the ICTY Trial Panel in the case involving Enver Hadžihasanović;

340. In February 1993, the Accused Hadžihasanović proposed the creation of operations groups ("OG") to ensure a more rational functioning of the chain of command between the area units and the 3rd Corps Command. Operations groups were subsequently created on 8 March 1993. The OG *Bosanska Krajina*, headquartered in Travnik, was in charge of the 7th Brigade and the 17th Brigade, among others. In June 1993, the 306th Brigade and the 325th Brigade were also placed under its command. When OG *Bosanska Krajina* was created on 8 March 1993, Mehmed Alagić was appointed its commander, a position he held until 1 November 1993 when he was appointed 3rd Corps Commander, replacing the Accused Hadžihasanović.

341. The OG *Lašva* had its headquarters in Kakanj and the 309th, 325th and 333rd Brigades were subordinated to it. The OG *Bosna* had its headquarters in Žepče or Zavidovići and was in command of the 318th and 319th Brigades. The OG *Zapad* had its headquarters in Bugojno and the commands of the 306th, 307th, 308th, 312th and 317th Brigades were subordinated to it. Selmo Cikotić became the Commander of OG *Zapad* on 8 March 1993. As of 17 March 1993, OG *Visoko*, which was originally subordinated to the 1st Corps, was re-subordinated to the 3rd Corps. In April 1993, OG *Visoko* was renamed OG *Istok*. In late August 1993, OG *Istok* was resubordinated to the 6th Corps.

90. In the first half of 1993, in the Bugojno area as well as in other parts of BiH, there was tension and conflict between the ARBiH and the HVO units. Between April and June 1993 the ARBiH and the HVO units jointly controlled the checkpoints in and around Bugojno. In July the units split; the special units made up of Muslims

³⁶ Established fact 321. *Gasal et al.*, Decision of 25 February 2011 to admit the established facts *ex officio* (in Section XII Part A, Procedural Decision No. 2).

³⁷ *Hadžihasanović & Kubura* Trial Judgment, Annex I.

went to the farming cooperative, and the HVO police forces made up of Croats went to the Gaj settlement.³⁸

91. The tensions culminated after two tragic incidents. One was the torching of Vrbanja, a Muslim village, which resulted in many casualties, and the other incident involved the killing of two Croat police officers who were members of the MUP's multiethnic patrols.³⁹

92. In July 1993 a conflict broke out between the HVO and the ARBiH in Bugojno.⁴⁰

93. In July 1993 the OG *Zapad* units, specifically the 307th Brigade and the civilian police, arrested a number of civilians and captured a number of HVO members who took part in an armed conflict with the ARBiH and the RBiH MUP civilian police. During the armed conflict in Bugojno, the HVO 1st Battalion retreated to the *Kalin* Hotel. The unit commander said he would surrender only to Senad Dautović, who was at that time the Chief of the Bugojno police station and one of the Commanders of the Unified Command of the Bugojno Army.⁴¹ It has been established that the command structure which developed in the prevailing circumstances in Bugojno was not part of the official organizational structure of the ARBiH.

94. However, the witnesses distinguish between the military police of the 307th Brigade and those of the Bugojno Defense Staff military police. The Brigade police were identified as the ones who took the detainees for interrogation.⁴²

95. The OG *Zapad* Command prescribed, in a special Order, measures related to holding detainees in the prison, including measures covering the entry into and exit from the prison, as well as the authority of the 307th Military Security Service to issue various approvals relevant to the prisoners.⁴³

³⁸ Josipa Čubela (15 October 2008); Slaven Brajković (3 September 2008); Besim Hodžić (1 December 2010).

³⁹ Josip Čubela (15 October 2008).

⁴⁰ *Hadžihasanović and Kubura* Trial Judgment, Annex I.

⁴¹ Mirsad Šutković (26 May 2010).

⁴² O-8/3 (Findings and opinion of expert witness Fikret Muslimović, February – March 2011).

⁴³ T-510 (Order by the OG *Zapad* Command OG dated 11 September 1993).

96. A number of the prisoners who were taken out for interrogation and to perform labour never returned and are presumed dead. The responsibility for these deaths is disputed. The Panel findings below illustrate the degree to which the military and the civilian authorities became enmeshed with each other. Areas of responsibility which should have been clear became entwined.

97. It is clear that the military should have been responsible for the persons who were captured or surrendered to them in time of conflict. But the realities of the war were such that the operations units of the ARBiH could not always adequately assume these responsibilities, inasmuch as it was difficult to maintain a front line while running a secure and an effective detention facility. The Panel notes that, as explained by the expert witness, the burden of running a prison is inconsistent with the use of combat units, which have to be operational, even in the context of taking an urgent decision to maneuver the units from one area of the war theater to another. The combat units of the ARBiH needed to be free to maneuver where they were needed most, and could not be permanently attached to a particular area. However, their responsibilities could not be transferred to non-military entities that maintained a more permanent presence in a particular area.

98. What took place in Bugojno was complicated. Lines of command and responsibility were blurred. Two exhibits demonstrate this fact. A letter from Selmo Cikotić to Handžhasnovic confirms the status of and plan for the detainees as well as the fact that the military accepted responsibility for them. This letter conflicts with a letter from the President of the RBiH Presidency to the President of the Bugojno Municipality War Presidency, in which the author demands an explanation for the disappearance of the prisoners of war. The letter reflects President Izetbegović's understanding that the President of the Bugojno Municipality War Presidency, and not the Commander of the Main Staff, had information regarding the missing prisoners.⁴⁴ Based on the evidence below, the Panel finds that responsibility for the disappearances rests with members of the military as well as members of the

⁴⁴ Dževad Mlačo (7 April 2010).

Wartime Presidency, and the conditions of detention at the *Iskra* stadium after 10 September 1993 rests primarily with the military.⁴⁵

99. On 18 March 1994 the Presidents of Bosnia and Herzegovina and Croatia signed the Washington Accords, ending the armed conflict between the Army of Bosnia and Herzegovina and the Croat troops.⁴⁶

100. The detention center at the *Iskra* stadium was shut down on the morning of 19 March 1994. All 294 remaining detainees were released and exchanged. Of the original group of detainees, all but 23 or 26 were accounted for (paragraph 276).

⁴⁵ O8/3 (Findings and opinion of expert witness Fikret Muslimović, February – March 2011).

⁴⁶ *Hadžihasanović and Kubura* Trial Judgment, Annex I.

IV. APPLICABLE LAW

101. The Court has applied the law of the CC of BiH. For sentencing purposes the Panel notes that while the crime of war crimes against civilians, war crimes against the wounded and sick, and war crimes against prisoners of war was codified under the former Criminal Code of the Socialist Federal Republic of Yugoslavia (“CC of the SFRY”) it also was punishable by a maximum sentence of death. The punishment prescribed by the CC of BiH is obviously more lenient than the capital punishment that was in force at the time of the perpetration of the criminal offence, which satisfies the principle of legality which constrains the applicability of the law to the application of the law which is more lenient to the perpetrator.⁴⁷

⁴⁷ *Đukić* Second Instance Verdict; *Maktouf*, KPŽ 32/05 (Ct. of BiH), Second Instance Verdict, 4 April 2006; *Paunović*, KPŽ 05/16 (Ct. of BiH), Second Instance Verdict, 27 October 2006; *Andrun*, X-KRŽ-05/42 (Ct. of BiH), Second Instance Verdict, 19 August 2008; *Pekez*, X-KRŽ 05/96-1 (Ct. of BiH), Second Instance Verdict, 5 May 2009; *Trbić*, X-KRŽ-07/386 (Ct. of BiH), Second Instance Verdict, 21 October 2010. *Paunović* and *Maktouf* were upheld by the Constitutional Court of Bosnia and Herzegovina in *Maktouf*, AP 1785/06 (Const. Ct. of BiH) 30 March 2007.

V. SUMMARY OF THE LAW

102. The Prosecution alleges that the Accused Nisvet Gasal and Musajb Kukavica committed the criminal offense of War Crimes against Civilians pursuant to Article 173(1)(c), (e) and (f) of the CC of BiH and the Accused Senad Dautović committed the criminal offense of War Crimes against Civilians in pursuant to Article 173(1)(a), (c), (e), and (f), War Crimes against the Wounded and Sick pursuant to Article 174(1)(a) and (b), War Crimes Prisoners of War pursuant to Article 175(1)(a) and (b). Furthermore, the Prosecution alleges that these offences were committed in violation of Article 3(1)(a) and (c) of the Geneva Convention relative to the Protection of Civilian Persons in the Time of War (IV) and Treatment of Prisoners of War (III) of 12 August 1949.

A. WAR CRIMES AGAINST CIVILIANS

103. The definition of the crime provided in Article 173(1) incorporates several general or contextual elements. Sub-paragraphs (a), (c), (e), and (f) of Article 173(1) define the specific crimes. To establish responsibility under Article 173, it must be shown that the general elements have been satisfied and that the Accused are responsible for one or more of the enumerated acts.

104. Article 173(1)(a), (c), (e), and (f) of the CC of BiH reads as follows:

(1) Whoever in violation of rules of international law in time of war, armed conflict or occupation, orders or perpetrates any of the following acts:

a) Attack on civilian population, settlement, individual civilians or persons unable to fight, which results in the death, grave bodily injuries or serious damaging of people's health;

[...]

c) Killings, intentional infliction of severe physical or mental pain or suffering upon a person (torture), inhuman treatment, biological, medical or other scientific experiments, taking of tissue or organs for the purpose of transplantation, immense suffering or violation of bodily integrity or health;

[...]

e) Coercing another by force or by threat of immediate attack upon his life or limb, or the life or limb of a person close to him, to sexual intercourse or an equivalent sexual act (rape) or forcible prostitution, application of measures of intimidation and terror, taking of hostages, imposing collective punishment,

unlawful bringing in concentration camps and other illegal arrests and detention, deprivation of rights to fair and impartial trial, forcible service in the armed forces of enemy's army or in its intelligence service or administration;

f) Forced labour, starvation of the population, property confiscation, pillaging, illegal and self-willed destruction and stealing on large scale of property that is not justified by military needs, taking an illegal and disproportionate contribution or requisition, devaluation of domestic money or the unlawful issuance of money,

shall be punished by imprisonment for a term not less than ten years or long-term imprisonment.

[...]

105. Moreover, the Prosecution alleged that all three Accused committed the criminal offense of War Crimes against Civilians in violation of Article 173(1) because they acted in violation of Article 3(1)(a) and (c) of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (IV) and Treatment of Prisoners of War (III) of 12 August 1949. Article 3 is common to all four Geneva Conventions and referred to as "Common Article 3".

106. Common Article 3 reads:

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

[...]

(c) outrages upon personal dignity, in particular humiliating and degrading treatment;

[...]

(2) The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

107. Common Article 3 contains “the fundamental humanitarian principles which underlie international humanitarian law as a whole”.⁴⁸ Common Article 3 is also widely recognized as being a foundation of customary international humanitarian law.⁴⁹ These fundamental rules apply to all conflicts, regardless of their international or non-international character.⁵⁰

**B. WAR CRIMES AGAINST THE WOUNDED AND SICK AND
WAR CRIMES AGAINST PRISONERS OF WAR**

108. As mentioned above, the Prosecution alleged that the Accused Senad Dautović also committed the criminal offense of War Crimes against the Wounded and Sick pursuant to Article 174(a) and (b) and War Crimes against Prisoners of War pursuant to Article 175(a) and (b).

109. Article 174(a) and (b) of the CC of BiH provides:

Whoever, in violation of the rules of international law in the time of war or armed conflict, orders or perpetrates in regard to wounded, sick, shipwrecked persons, medical personnel or clergy, any of the following acts:

(A) Depriving another persons of their life (murders), intentional infliction of severe physical or mental pain or suffering upon persons (tortures), inhuman treatment, including therein biological, medical or other scientific experiments, taking of tissue or organs for the purpose of transplantation;

(B) Causing of great suffering or serious injury to bodily integrity or health;

[...]

shall be punished by imprisonment for a term not less than ten years or long-term imprisonment.

110. Article 175(a) and (b) of the CC of BiH provides:

⁴⁸ *Delalić* Appeal Judgment, para. 143.

⁴⁹ Case Concerning Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v. United States of America), Merits, ICJ, 27 June 1986, ICJ Reports 1986, para. 218; *Prosecutor v. Tadić*, IT-94-1, Decision by the Appeals Chamber on the Defense Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995 (“*Tadić* Decision on Interlocutory Appeal on Jurisdiction”), paras 98 & 129.

⁵⁰ *Delalić* Appeals Judgment, para. 143.

Whoever, in violation of the rules of international law, orders or perpetrates in regard to prisoners of war any of the following acts:

(A) Depriving another persons of their life (murders), intentional infliction of severe physical or mental pain or suffering upon persons (tortures), inhuman treatment, including therein biological, medical or other scientific experiments, taking of tissue or organs for the purpose of transplantation;

(B) Causing of great suffering or serious injury to bodily integrity or health;

[...]

shall be punished by imprisonment for a term not less than ten years or long-term imprisonment.

111. Moreover, the Prosecution alleged that Accused Senad Dautović committed the criminal offense of War Crimes against the Wounded and Sick in violation of Article 174(a) and (b) and War Crimes against Prisoners of War in violation of Article 175(a) and (b) because they acted in violation of Article 3(1)(a) and (c) of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (IV) and Treatment of Prisoners of War (III) of 12 August 1949.

112. As will be explained further below, Articles 173, 174 and 175 require certain general elements to be met for the conduct of the Accused to constitute a war crime against civilians, wounded and sick and prisoners of war. The Panel recalls that the general requirements are:

- a. The conduct must be in violation of rules of international law in time of war, armed conflict or occupation;
- b. The violation must take place in time of war, armed conflict or occupation;
- c. The act must be related to the state of war, armed conflict or occupation;
- d. The accused must order or perpetrate the act.⁵¹

113. However, Article 174 and Article 175 each have an additional general requirement. Article 174 applies to war crimes against the *wounded, sick, shipwrecked persons, medical personnel or clergy* and Article 175 applies to war crimes against *prisoners of war*. In addition, identical sub-paragraphs (a) and (b) of Articles 174 and 175 define specific crimes.

⁵¹ Đukić First Instance Verdict, para. 160.

114. While the indictment alleges incidents to which this article might be applicable – namely, instances in which some individuals who were performing forced labor were injured and denied adequate medical aid – this occurrence is also covered by Article 173, meaning there is no need to perform an analysis under Article 174.

115. Article 175 applies to war crimes against prisoners of war, a status that does not exist for individuals detained in a non-international armed conflict pursuant to the Third Geneva Convention.⁵² While the Trial Panel is aware that Article 175 is a domestic law that may not incorporate all of the Third Geneva Convention's preconditions for application, the Panel notes that neither the Prosecution nor Defense raised this issue, and inasmuch as each of the potentially criminal acts of the Accused violates some provision of Article 173, it is not necessary to look further to impose liability on the Accused pursuant to Article 175.

116. The Defense requested that the Trial Panel to adopt established facts indicating the armed conflict in Bugojno was international in character. The Prosecution, however, disputed these facts, and the Panel left it to either party to adduce evidence as to the international or national nature of the armed conflict. Neither party submitted evidence sufficient to allow the Panel to reach a conclusion. However, as each of the alleged crimes fits in Article 173, and because soldiers who took part in the conflict and civilians who were militarily engaged in this conflict lay down their arms and surrendered, the Panel has decided to apply Article 173 to all counts.

C. GENERAL ELEMENTS OF WAR CRIMES

117. As stated above, Article 173(1) of the CC of BiH requires that certain elements be satisfied for the conduct of the Accused to constitute a war crime against civilians. The Panel recalls that in the First Instance Verdict of *Novak Đukić* (X-KR-07/394,

⁵² *The Relevance of IHL in the Context of Terrorism*, International Committee of the Red Cross, para. 4(b) (21 July 2005) ("In non-international armed conflict combatant status does not exist. Prisoner of war... status...do[es] not apply. Members of organized armed groups are entitled to no special status under the laws of non-international armed conflict"); John P. Cerone, *Status of Detainees in Non-International Armed Conflict, and their Protection in the Course of Criminal Proceedings: The Case of Hamdan v. Rumsfeld*, ASIL Insight, Vol. 10, Iss. 17 (14 July 2006) available at <http://www.asil.org/insights060714.cfm> ("[U]pon capture, [lawful combatants] are entitled to prisoner-of-war treatment. This privilege exists only in international armed

12 June 2009) which was affirmed on appeal,⁵³ in which it was held that all war crimes (War Crimes against the Wounded and the Sick, War Crimes against Prisoners of War, and War Crimes against Civilians) must meet the following criteria:

- a. The conduct must be in violation of rules of international law in time of war, armed conflict or occupation;
- b. The violation must take place in time of war, armed conflict or occupation;
- c. The act must be related to the state of war, armed conflict or occupation;
- d. The accused must order or perpetrate the act.

1. The conduct must be in violation of rules of international law in time of war, armed conflict or occupation

118. The source of law of the Court of BiH is domestic law, and the Panel is rendering its verdict based on Article 173 of the CC of BiH. However, Article 173(1) states that the Accused must act in violation of *rules of international law*. Article 2(b) of Additional Protocol I defines rules of international law as “the rules applicable in armed conflicts set forth in international agreements to which the Parties to the conflict are Parties and the generally recognized principles and rules of international law which are applicable to armed conflict”.⁵⁴

119. Therefore, the Panel must also base its decision on specific rules of international law, whether conventional or customary in nature, which was applicable during the period defined in the Indictment. Article 173(1) of the CC of BiH criminalizes the violation of these rules by anyone who orders or perpetrates these acts. Therefore, violation of the rule need not *per se* have been criminalized under international law during the period defined in the Indictment. The prescribed conduct must have been applicable under domestic and/or international law at the time the act was committed. Referring to the Indictment, the Panel concludes the violation of the rules of international humanitarian law are contained in both Common Article 3 and international customary law; and therefore that this provision of international

conflict. Thus, non-state combatants in a non-international armed conflict...cannot be entitled to prisoner of war status, since such status does not exist in the law of non-international armed conflict”).

⁵³ Đukić Second Instance Verdict.

humanitarian law is applicable to this case insofar as they satisfy the requirements of Article 173(1) of the CC of BiH and of its reference to rules of international law.

120. The Trial Panel in *Kovać* also held similarly in interpreting this general element of the crime. The *Kovać* Panel pointed out that the act need not have entailed *individual criminal responsibility* under international law at the time.⁵⁵ Indeed, the Trial Panel explicitly stated that “there is no need to determine whether the violation of the relevant [i]nternational [l]aw rule amounted to criminal responsibility under [i]nternational [l]aw”.⁵⁶ The Panel went on to state that although it is expected the violation will give rise to criminal liability under both international and national law, the CC of BiH is sufficient to impose individual criminal responsibility.⁵⁷ Furthermore, the Appellate Panel, following the CC of BiH commentary, has held that Article 173 applies regardless of the international or non-international character of the conflict and is not limited to grave breaches of the Geneva Conventions.⁵⁸

121. According to the ICTY Appeals Chamber, “[i]nternational humanitarian law applies from the initiation of such armed conflicts and extends beyond the cessation of hostilities [...]”.⁵⁹ As will be explained in the section below, the Panel finds that there existed an armed conflict in the territory of Bosnia and Herzegovina during the period considered in the Indictment. The State of Bosnia and Herzegovina, as a successor of the Socialist Federal Republic of Yugoslavia, had ratified the Geneva Conventions and their additional Protocols.⁶⁰

122. The Accused is charged with the specific offences of killings, torture, inhuman treatment, forced labor, and illegal arrests and detention. As discussed in detail below, with the exception of illegal detention, the Panel will determine if each of the alleged acts violates at least one provision of Common Article 3 and/or the Additional

⁵⁴ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Prisoners of Victims of International Armed Conflicts (Protocol I) of 8 June 1977.

⁵⁵ *Kovać* First Instance Verdict, p. 26.

⁵⁶ *Kovać* First Instance Verdict, p. 26.

⁵⁷ *Kovać* First Instance Verdict, p. 26.

⁵⁸ *Andrun* Second Instance Verdict, p. 14.

⁵⁹ *Tadić* Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction, para. 70.

⁶⁰ Ratified by the SFRY on 11 June 1979. See Bosnia and Herzegovina’s Declaration of Succession of 31 December 1992, where it declared that it had become party to the Geneva Conventions and the Additional Protocols as the date of its independence, 6 March 1992.

Protocol II to the Geneva Conventions.⁶¹ BiH is bound by both Common Article 3 and Additional Protocol II pursuant to the customary laws of secession,⁶² and the Accused were therefore bound to obey them. Furthermore, Common Article 3 applies to both international and non-international armed conflicts,⁶³ and the Court of BiH has repeatedly found that the parties to the conflict in Bosnia were bound by Common Article 3.⁶⁴ While Additional Protocol's threshold of application is narrower than that of Common Article 3,⁶⁵ the conflict between the ARBiH and the HVO from July 1993 to March 1994 meets the requirements of Additional Protocol II.⁶⁶ As discussed below, the majority of the relevant provisions that appear only in Additional Protocol II and not Common Article 3 constitute rules of customary international law that apply to any case of non-international conflict. Therefore, the parties to the conflict are clearly bound by the pertinent Additional Protocol II provisions.

⁶¹ The relevant provisions of AP II include Articles 4 and 5. Article 4 of APII prohibits, *inter alia*, the following acts against "persons who do not take a direct part of who have ceased to take part in hostilities, whether or not their liberty has been restricted [...] (a) violence to the life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment; (b) collective punishments; [...] (e) outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form or indecent assault; [...] [and] (g) pillage". Article 5(1) of APII provides, in part, that "the following provisions shall be respected as a minimum with regard to persons deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained; [...] (b) the persons referred to in this paragraph shall, to the same extent as the local civilian population, be provided with food and drinking water and be afforded safeguards as regards health and hygiene and protection against the rigours of the climate and the dangers of armed conflict; [...] [and] (e) they shall, if made to work, have the benefit of working conditions and safeguards similar to those enjoyed by the local civilian population". Article 5(2) of APII states, in part, that "[t]hose who are responsible for the internment or detention of the persons referred to in [Article 5(1)] shall also, within the limits of their capabilities, respect the following provisions relating to such persons: [...] (e) their physical or mental health and integrity shall not be endangered by any unjustified act or omission. Accordingly, it is prohibited to subject the persons described in this Article to any medical procedure which is not indicated by the state of health of the person concerned, and which is not consistent with the generally accepted medical standards applied to free persons under similar medical circumstances".

⁶² The Geneva Conventions were ratified by the SFRY on 11 June 1979. See also Bosnia and Herzegovina's Declaration of Succession of 31 December 1992, where it declared that it had become party to the Geneva Conventions and the Additional Protocols as the date of its independence, 6 March 1992.

⁶³ See e.g. Fourth Geneva Convention, Art. 3 ("In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions [...]"). See also *Nicaragua v. United States of America*, para. 218; *Damjanović and Damjanović* First Instance Verdict, X-KRŽ-05/107 (Ct. of BiH), First Instance Verdict, 18 June 2007, p. 13 (noting that Common Article 3 binds "all parties in any kind of conflict, whether internal or international").

⁶⁴ See e.g. *Dukić* First Instance Verdict, paras 155 and 163; *Kovać* First Instance Verdict, p. 27. See also *Hodžić*, X-KR-07/430 (Ct. of BiH), First Instance Verdict, 29 June 2009, para. 10.

⁶⁵ Specifically, APII requires an armed conflict between government armed forces and "dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of [a State's] territory as to enable them to carry out sustained and concerted military operations and to implement [APII]". APII, Art. 1(1).

⁶⁶ Indeed, the ICTY has stated that there was "no doubt" that Additional Protocol II "was applicable to the armed conflict" in Bosnia as of 1995. *Prosecutor v. Blagojević & Jokić*, IT-02-6-T, Judgment, 17 January 2005, fn. 1964.

123. In addition to violating Common Article 3 and/or Additional Protocol II, several of the acts discussed below violate customary international law as applied to non-international armed conflicts.

124. The Panel emphasizes that one need not have had specific knowledge of the existence of these international norms. It is sufficient that one violate these norms. It is never necessary that one have the ability to define the legal qualifications of his crime, only that he have notice that his actions and intentions are criminal. It is for the Panel to determine the crime committed.⁶⁷ One must, however, have the specific *mens rea* applicable to the underlying offence one is charged with in order to be found guilty.

125. In order to establish that rules of international law have been violated in the specific case, it is necessary to establish that the action was aimed against a protected category of persons under Article 3(1) of the Fourth Geneva Conventions and Article 4(1) and Article 5 of Additional Protocol II and there exists a nexus between the act and the armed conflict.⁶⁸ According to the definition of the protected category under Article 3(1), it is “persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat*”. In addition, under sub-paragraph 2 of Article 3, the wounded and sick enjoy a special protection.⁶⁹ The commentary for Article 3 of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 makes a distinction between Article 3 in the Fourth Geneva Convention (Civilians) and Article 3 of the Third Geneva Convention (POWs) and explains:

[...] Article 3 has an extremely wide field of application and covers members of the armed forces as well as persons who do not take part in the hostilities. In this instance, however, the Article naturally applies first and foremost to civilians –

⁶⁷ *Dukić* First Instance Verdict, para. 165 affirmed *Dukić* Second Instance Verdict. See also *Andrun* Second Instance Verdict, p. 15 (Noting that it is not necessary “that the perpetrator knows or intends to violate an international norm”, but rather “it is sufficient that his conduct objectively constitutes a violation of the rules of international law”).

⁶⁸ See e.g. *Damjanović and Damjanović* First Instance Verdict, p. 13 (noting that Common Article 3 requires that there be a “close nexus between the armed conflict and alleged offence”); *Prosecutor v. Kayishema & Ruzindana*, ICTR-95-1-T, Judgment, 21 May 1999, para. 169 (“[I]n order for an act to breach Common Article 3 and [Additional] Protocol II... there must be a nexus between the crime and the armed conflict”).

⁶⁹ See also Michael Bothe, *Direct Participation in Hostilities in Non-International Armed Conflict*, International Committee of the Red Cross (October 2004), p. 5.

that is to people who do not bear arms. In the case of members of armed forces, it is in the corresponding Article in the Third Convention to which most cases appeal would be made. All the persons referred to in (1) without distinction are entitled to humane treatment. Criteria which might be employed as a basis for discrimination against one class of persons or another are enumerated in the provision, and their validity denied.⁷⁰

126. The Prosecution alleges violations of Article 3 in both the Third and Fourth Geneva Convention.

127. Article 4(1) of Additional Protocol II states “[a]ll persons who do not take a direct part or who have ceased to take part in hostilities, whether or not their liberty has been restricted” and Article 5 setting forth certain guarantees “with regard to persons deprived of their liberty for reasons related to the armed conflict”.⁷¹ Article 5 of AP II provides, in part, that:

In addition to the provisions of Article 4 the following provisions shall be respected as a minimum with regard to persons deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained;

(a) the wounded and the sick shall be treated in accordance with Article 7;

(b) the persons referred to in this paragraph shall, to the same extent as the local civilian population, be provided with food and drinking water and be afforded safeguards as regards health and hygiene and protection against the rigours of the climate and the dangers of the armed conflict;

(c) they shall be allowed to receive individual or collective relief;

(d) they shall be allowed to practise their religion and, if requested and appropriate, to receive spiritual assistance from persons, such as chaplains, performing religious functions;

(e) they shall, if made to work, have the benefit of working conditions and safeguards similar to those enjoyed by the local civilian population.

2. Those who are responsible for the internment or detention of the persons referred to in paragraph 1 shall also, within the limits of their capabilities, respect the following provisions relating to such persons:

⁷⁰ Commentary to Article 3 of Convention (IV) relative to the Protection of Civilian Persons in Time of War of 12 August 1949.

⁷¹ As explained by the ICRC, the concept of “direct participation in hostilities” evolved from the reference in Common Article 3 to persons “taking no active part in the hostilities”. Nils Melzer, *Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law*, International Committee of the Red Cross (2009), p. 43 (“Accordingly, even though Common Article 3 uses the term ‘active part’ and APII refers to ‘direct participation’, the “terms ‘direct’ and ‘active’ refer to the same quality and degree of individual participation in hostilities”).

(a) except when men and women of a family are accommodated together, women shall be held in quarters separated from those of men and shall be under the immediate supervision of women;

(b) they shall be allowed to send and receive letters and cards, the number of which may be limited by competent authority if it deems necessary;

(c) places of internment and detention shall not be located close to the combat zone. The persons referred to in paragraph 1 shall be evacuated when the places where they are interned or detained become particularly exposed to danger arising out of the armed conflict, if their evacuation can be carried out under adequate conditions of safety;

(d) they shall have the benefit of medical examinations;

(e) their physical or mental health and integrity shall not be endangered by any unjustified act or omission. Accordingly, it is prohibited to subject the persons described in this Article to any medical procedure which is not indicated by the state of health of the person concerned, and which is not consistent with the generally accepted medical standards applied to free persons under similar medical circumstances.

2. The violation must take place in time of war, armed conflict or occupation

128. Article 173 of the CC of BiH requires that the offence be committed in time of war, armed conflict or occupation. It does not require that the conflict be either internal or international in nature. As recognized by the Appellate Panel of the Court of BiH, “[a]n armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State”.⁷²

129. Based on the relevant legal provisions and the evidence contained in the case-file, the Panel concludes that an armed conflict existed in the territory of Bosnia and Herzegovina during the period considered in the Indictment. The Panel notes that this fact was not challenged by the parties during the proceedings. Importantly, both the Court of BiH and the ICTY have repeatedly found that an armed conflict

⁷² *Andrun* Second Instance Verdict, p. 17 citing *Tadić* Decision on Interlocutory Appeal on Jurisdiction, para. 70. See also *Dukić* First Instance Verdict, para. 170 citing *Prosecutor v. Kunarac, Kovać & Voković* Appeals Judgment, para. 56.

existed in BiH during the relevant time period.⁷³ The Panel concludes based on the evidence contained in the case-file that there was an armed conflict between the ARBiH and the HVO during the relevant periods indicated in the indictment.

130. Article 173 of the CC of BiH requires that the offence be committed in time of war, armed conflict or occupation. It does not require that the conflict be either internal or international in nature. Based on this requirement under Article 173 and the requirement under Common Article 3, the Panel does not deem it necessary to qualify the overall conflict in Bosnia and Herzegovina as being either international or non-international in character; however as to the conflict in the Bugojno area there is sufficient evidence to indicate there was an armed conflict.

3. The act must be related to the state of war, armed conflict or occupation

131. The third condition of Article 173(1) of the CC of BiH is that there must be a nexus between the act of the Accused and the armed conflict. Indeed, “[t]he armed conflict need not have been causal to the commission of the crime, but the existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator’s ability to commit the crime, his decision to commit the crime, the manner in which it was committed or the purpose for which it was committed”.⁷⁴

132. Several factors can determine the existence of a nexus between the act of the Accused and the armed conflict. Factors may include whether: (i) the perpetrator was a combatant;⁷⁵ (ii) the victim was a noncombatant;⁷⁶ (iii) the victim was a member of the opposing party;⁷⁷ (iv) the act served to further an ultimate military goal;⁷⁸ and (v) the perpetrator committed the act as part of his official duties.⁷⁹ In addition, courts may consider whether the conflict played a substantial role in the perpetrator’s ability to commit the crime, his decision to commit it, his purpose in committing it, or the

⁷³ See e.g. *Andrun* Second Instance Verdict, pgs 17-18; *Bundalo et al.*, X-KR-07/419 (Ct. of BiH), First Instance Verdict, 21 December 2009, p. 65; *Hodžić* First Instance Verdict, paras 5-9; *Tadić* Decision on Interlocutory Appeal on Jurisdiction, para. 72; *Prosecutor v. Orić*, IT-03-68-T, Judgment, 30 June 2006 (“*Orić* Trial Judgment”), para. 259.

⁷⁴ *Dukić* First Instance Verdict, para. 175 citing *Kunarac et al* Appeals Judgment, para. 58.

⁷⁵ *Damjanović and Damjanović* First Instance Verdict, pgs 13-14 citing *Kunarac* Appeals Judgment, para. 59.

⁷⁶ *Damjanović and Damjanović* First Instance Verdict, p. 13 citing *Kunarac* Appeals Judgment, para. 59.

⁷⁷ *Damjanović and Damjanović* First Instance Verdict, p. 13 citing *Kunarac* Appeals Judgment, para. 59.

⁷⁸ *Damjanović and Damjanović* First Instance Verdict, p. 13 citing *Kunarac* Appeals Judgment, para. 59.

manner in which he committed it,⁸⁰ although the armed conflict need not have a *causal* connection to the crime.⁸¹ Importantly, the offense need not be geographically close to the hostilities or conflict, as the acts generally need only occur within the territory or a party to the conflict.⁸² Finally, the crime need not occur at the exact time hostilities are occurring.⁸³

133. In considering factors (i) and (ii) the Court notes the following: the term “combatant” is not found in the international instruments governing non-international armed conflict – namely, Common Article 3 to the Geneva Conventions of 1949 and/or the Additional Protocol II to the Geneva Conventions (“APII”). It is well established that certain categories of persons (e.g. those who fight), lack the protections afforded to ‘civilians’ in non-international armed conflict, and thus may be likened to combatants.⁸⁴ In particular, persons who belong to the armed forces of the State who are authorized to engage in combat and those who assume a “continuous combat function” on behalf of a non-State organized armed group⁸⁵ are not considered civilians protected from attack in non-international armed conflict.⁸⁶ In addition, even if not a member of an armed group, a person will lose the protection afforded to the civilian population “for such time as they take a direct part in

⁷⁹ *Damjanović and Damjanović* First Instance Verdict, p. 13 citing *Kunarac* Appeals Judgment, para. 59.

⁸⁰ *Damjanović and Damjanović* First Instance Verdict, pgs 13-14 citing *Kunarac et al* Appeals Judgment, para. 58.

⁸¹ *Damjanović and Damjanović* First Instance Verdict, p. 14 citing *Kunarac* Appeals Judgment, para. 58.

⁸² *Damjanović and Damjanović* First Instance Verdict, p. 14 citing *Kunarac* Appeals Judgment, para. 57.

⁸³ *Damjanović and Damjanović* First Instance Verdict, p. 14 citing *Kunarac* Appeals Judgment, para. 57.

⁸⁴ See e.g. Nils Melzer, *Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law*, p. 28 (“As the wording and logic of [Common Article] and [AP II] reveals, civilians, armed forces, and organized armed groups of the parties to the conflict are mutually exclusive categories...in non-international armed conflict”); Michael Bothe, *Direct Participation in Hostilities in Non-International Armed Conflict*, pgs 9-10. (“As in the case of international armed conflict, there exist, under the law of non-international armed conflict, two categories of persons: fighters and civilians [...]”). Of course, “fighters” in the context of non-international armed conflict are not afforded a combatant’s privilege, and thus cannot be granted prisoner of war status.

⁸⁵ Melzer, *Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law*, p. 33. Melzer elaborates on the concept of “continuous combat function” as follows: “Continuous combat function requires lasting integration into an organized armed group acting as the armed forces of a non-State party to an armed conflict. Thus, individuals whose continuous function involves the preparation, execution, or command of acts or operations amounting to direct participation in hostilities are assuming a continuous combat function. An individual recruited, trained and equipped by such a group to continuously and directly participate in hostilities on its behalf can be considered to assume a continuous combat function even before he or she first carries out a hostile act. This case must be distinguished from persons comparable to reservists who, after a period of basic training or active membership, leave the armed group and reintegrate into civilian life”. *Id.* p. 34.

⁸⁶ *Id.* pgs 27-36.

hostilities”,⁸⁷ which refers to “specific acts carried out by individuals as part of the conduct of hostilities between parties to an armed conflict”.⁸⁸ However, members of armed forces who have laid down their arms are entitled to protection under Common Article 3 as well as persons taking no active part in hostilities.

4. The accused must order or perpetrate the act

134. Finally, Article 173(1) of the CC of BiH requires that the Accused either directly perpetrate the illegal act or order the said act.⁸⁹ The Panel emphasizes that this relates to the mode of liability of the Accused and does not constitute an element of the crime as such. The Prosecution alleged that the Accused committed these criminal offences in conjunction with Article 180(1) and (2) of the CC of BiH. The Panel considers it unnecessary here to rule on the different modes of liability which can be imputed to an individual charged with war crimes against civilians pursuant to 173 of the CC of BiH.

135. The Appellate Panel of the Court of BiH has held that one of the “general elements of the criminal offense of [w]ar [c]rimes against [c]ivilians” is that the “perpetrator must order or perpetrate the act”.⁹⁰ While jurisprudence interpreting this element of Article 173 is limited, the Appellate Panel has made it clear that perpetration, as referred to in Article 173, includes co-perpetration, which is defined by Article 29 of the CC of BiH.⁹¹ In addition to perpetration, the Trial Panel finds that the element is satisfied if it meets the requirements of Article 180 of the CC of BiH.

⁸⁷ AP II, Art. 13(3). As explained by the ICRC, the concept of “direct participation in hostilities” evolved from the reference in Common Article 3 to persons “taking no active part in the hostilities”. Melzer, *Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law*, p. 43 (“Hence, although Common Article 3 uses the term “active part” and APII refers to “direct participation”, the terms ‘direct’ and ‘active’ refer to the same quality and degree of individual participation in hostilities”).

⁸⁸ Melzer, *Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law*, p. 43. For elaboration as the meaning of the notion “direct participation in hostilities” read pgs 41-68.

⁸⁹ *Dukić* First Instance Verdict, para. 179.

⁹⁰ *Andrun* Second Instance Verdict, p. 14.

⁹¹ *Andrun* Second Instance Verdict, p. 25 (holding that co-perpetration, as defined by Article 29 of the CC of BiH, “represents a form of perpetration” under Article 173).

D. ELEMENTS OF THE SPECIFIC CRIMES

136. The Trial Panel recalls that the Prosecution alleges that the Accused Nisvet Gasal and Musajb Kukavica committed the criminal offense of war crimes against civilians pursuant to Article 173(1)(c), (e) and (f) of the CC of BiH. Furthermore, the Prosecution alleges that these offences were committed in violation of Common Article 3(1)(a) and (c) of the Geneva Conventions. Specifically, the Prosecution alleges that the Accused Gasal and Kukavica committed the underlying offences of inhuman treatment, other illegal arrests and detention, torture, and forced labor.

137. The Trial Panel recalls the Prosecution allegation that the Accused Senad Dautović committed the criminal offense of War Crimes against Civilians pursuant to Article 173(1)(a), (c), (e) and (f), War Crimes against the Wounded and Sick pursuant to Article 174(1)(a) and (b), War Crimes Prisoners of War pursuant to Article 175(1)(a) and (b) of the CC of BiH. Furthermore, the Prosecution alleges that these offences were committed in violation of Common Article 3(1)(a) and (c) of the Geneva Conventions. Specifically, the Accused Senad Dautović was charged with the crimes of other illegal arrests and detention, forced labor, killings, torture, and inhuman treatment.

138. As the CC of BiH does not define these underlying offences in Articles 173, 174 and 175, the Panel will have recourse to international law to interpret the applicable domestic provisions as these explicitly and specifically refer to international law.

1. Killings

139. Both Common Article 3 and Additional Protocol II expressly prohibit the murder of persons who are not taking an active or direct part in hostilities.⁹² According to the ICTY, “murder” in violation of the laws and customs of war requires “the death of the victim as a result of an act of the accused, committed with the

⁹² See e.g. Fourth Geneva Convention, Art. 3(1)(a) (prohibiting “violence to life and person, in particular murder of all kinds” against persons who are not taking an active part in hostilities); APII, Art. 4(2)(a) (prohibiting “violence to the life, health and physical or mental well-being of persons, in particular murder” against persons not taking an active part in hostilities).

intention to cause death and against a person taking no active part in the hostilities”.⁹³ Thus, any act that constitutes a “killing” under Article 173 will violate international law if it also fits the definition of murder as a war crime.

140. The Court of BiH has previously identified the elements of murder:

1. The deprivation of life; and
2. the direct intention to deprive of life, as the perpetrator was aware of this act and wanted the act to be perpetrated.⁹⁴

141. The Appellate Panel has upheld the conviction of a camp prison guard for the war crime of killing under Article 173 in circumstances regarding the removal of prisoners.⁹⁵ Specifically, in *Andrun*, the Appellate Panel affirmed the conviction of Nikola Andrun, who was Deputy Commander of the Gabela camp in BiH in 1993, for the killing of a detainee based, in part, on his role in removing the detainee from the hangar in which the detainee was being held and telling the detainee he would be killed.⁹⁶ Although the evidence did not establish who physically carried out the killing, the Appellate Panel concluded that “the actions undertaken by Andrun amount[ed] to co-perpetration in the murder, primarily because it follows from his conduct that he had the authority to take out the prisoner, to tell him exactly what was going to happen to him, thereby indicating that he knew that the victim would be killed, which eventually happened”.⁹⁷ Hence, the accused “decisively contributed to depriving [the detainee] of his life, regardless of who actually killed him”, as taking “this prisoner out of the hangar was one of the necessary steps in the sequence of actions that led to the murder”.⁹⁸

142. The Appellate Panel in *Nikačević* stated that;

The factual description of the criminal offense of which the Accused is found guilty as an accessory in the operative part of the Verdict, must include all facts and circumstances showing that the Accused had knowledge of both the offense

⁹³ *Kordić & Čerkez* Appeals Judgment, para. 37.

⁹⁴ See *Trbić* First Instance Verdict, para. 177 and fn 95.

⁹⁵ See *Andrun* Second Instance Verdict, pgs 22-23.

⁹⁶ *Andrun* Second Instance Verdict, pgs 22-23.

⁹⁷ *Andrun* Second Instance Verdict, p. 23.

⁹⁸ *Andrun* Second Instance Verdict, p. 23.

and the perpetrator, as well as that, that by his acts, he supported the act of the perpetrator.⁹⁹

143. According to the above, to determine if the Accused are responsible for these killings as a war crime under Article 173, the Panel considered whether in their respective positions, they possessed the authority to prevent the release of individuals to the custody of ARBiH, had the knowledge that these detainees would be killed, and that the detainees were in fact killed after being turned over to ARBiH.

2. Inhuman treatment

144. Although neither Common Article 3 or Additional Protocol II expressly prohibits “inhuman treatment”, both outlaw “cruel treatment” of persons not taking part in hostilities,¹⁰⁰ and the ICTY has made it clear that the terms “inhuman treatment” and “cruel treatment” are interchangeable for purposes of determining whether an act amounts to a war crime.¹⁰¹ Indeed, in *Hodžić*, a Trial Panel held that the behavior amounting to “cruel treatment” under Common Article 3 “meet[s] the requirements of inhuman treatment” under Article 173 of the CC of BiH.¹⁰² By the same token, any act that constitutes inhuman treatment under Article 173 will also constitute “cruel treatment” in violation of Common Article 3 and Additional Protocol II, and therefore be a violation of international law.

145. Inhuman treatment is not defined in the CC of BiH, but the jurisprudence of the Court of BiH and the ICTY offer significant guidance in this area. According to the Appellate Panel of the Court of BiH, inhuman treatment “encompasses all other offences that are not specifically prescribed under the criminal offence the Accused is pronounced guilty of”, as long as the accused had the intention to cause an inhuman act.¹⁰³ Similarly, the ICTY Appeals Chamber has defined the elements of cruel

⁹⁹ *Nikačević* Second Instance Verdict, para. 98.

¹⁰⁰ See e.g. Fourth Geneva Convention, Art. 3(1)(a); APII, Art. 4(2)(a).

¹⁰¹ See e.g. *Naletilić* Trial Judgment, para. 246 (“[O]ffences of inhuman treatment and cruel treatment are residual clauses under Article 2 [grave breaches of the Geneva Conventions] and Article 3 [violations of the laws customs of war] of the Statute respectively. Materially, the elements of these offences are the same.”); *Prosecutor v. Kordić & Čerkez*, IT-95-14/2-T, Judgment, 26 February 2001 (“*Kordić & Čerkez* Trial Judgment”), para. 265 (“[C]ruel treatment’ is “equivalent to the offence of inhuman treatment in the framework of the grave breaches provisions of the Geneva Conventions”).

¹⁰² *Hodžić* First Instance Verdict, para. 33.

¹⁰³ *Andrun* Second Instance Verdict, pgs 36-37. See also *Četić*, X-KR-08/549-3 (Ct. of BiH), First Instance Verdict, 18 March 2010, p. 18 (holding that the prohibition on inhuman treatment in Article 173

treatment as a violation of the laws or customs of war, in relation to Common Article 3(1)(a) of the Geneva Conventions as:

1. an intentional act or omission...which causes serious mental or physical suffering or injury or constitutes a serious attack on human dignity;
2. committed against a person taking no active part in hostilities.¹⁰⁴

146. To determine whether the acts reach the level of gravity and seriousness required for criminal responsibility, the Court may consider a number of factors, including: the scale and intensity of the treatment; its duration; actual bodily injury or intense physical and mental suffering; nature and context of the treatment; the sex, age, and state of health of the victim; and premeditation.¹⁰⁵

147. The *Mandić* Appellate Panel of the Court of BiH affirmed that the conditions and treatment within the Foča detention camp amounted to inhuman treatment based on the following facts: the facility was overcrowded, with as many as eighteen people occupying a solitary confinement room making movement or lying down for sleep impossible; there were insufficient beds and blankets; detainees were locked up constantly except for meals or work detail; there were insufficient hygiene items and toilets and no hot water; there was insufficient heat, and guards would confiscate blankets and open windows in the winter; medical attention was lacking, especially for those severely injured; food was insufficient, leading to massive weight loss; and the detainees suffered severe psychological trauma from having to listen to the sound of others being beaten and tortured.¹⁰⁶

148. In contrast, the *Hodžić* Trial Panel declined to find that prisoners' conditions of confinement amounted to inhuman treatment, despite the fact that the detainees were held in a stable for up to seven months in "very bad conditions, with little food and water, with no electricity, using a bucket as a toilet, sleeping on straw on a floor normally used for cattle, and using old coats for warmth at night",¹⁰⁷ because the

is a blanket prohibition meant to encompass acts that cause great suffering or serious mental or physical injuries).

¹⁰⁴ *Delalić* Appeal Judgment, para. 424

¹⁰⁵ *Andrun* Second Instance Verdict, p. 38. *Alić*, X-KR-06/294 (Ct. of BiH), First Instance Verdict, 11 April 2008, p. 25.

¹⁰⁶ *Mandić*, X-KRŽ-05/58 (Ct. of BiH), Second Instance Verdict, 1 September 2009, para. 95.

¹⁰⁷ *Hodžić* First Instance Verdict, para. 53.

Panel was “not satisfied that the prisoners were confined in conditions very different to the prevailing living conditions of the free civilian population”.¹⁰⁸

149. The use of human shields has also been found to constitute inhuman treatment as a war crime. Specifically, the *Kujundžić* Trial Panel of the Court of BiH found the accused responsible for inhuman treatment based on his role in forcing victims to stand on the front lines with their hands behind their heads while they watched other human shields around them being killed.¹⁰⁹ The victims did not have clothing on their upper bodies and were made to look down as they stood in the range of fire.¹¹⁰ One detainee testified that he was made to walk in front of tanks despite the fact that he had difficulty moving due to a fever.¹¹¹

150. Physical assault is another act that may amount to inhuman treatment, as seen in the ICTY case of *Prosecutor v. Boškoski & Tarčulovski*, in which the Appeals Chamber upheld the decision where civilians in a basement were physically assaulted by police officers.¹¹² The offending police members entered the civilians’ home, brought them onto the street, and then proceeded to beat them, threaten them with knives and guns, and kick them.¹¹³ Many were made to lie on the ground with their eyes covered while others were beaten.¹¹⁴ Similarly, the *Vrdoljak* Trial Panel of the Court of BiH convicted the accused of inhuman treatment under Article 173 of the CC of BiH based on a finding that on two occasions, the accused beat detainees with his “hands, feet with military boots on and batons”.¹¹⁵

151. Finally, courts may look at a combination of factors to determine the existence of inhuman treatment. For instance, in *Prosecutor v. Aleksovski*, the ICTY Appeals Chamber held that forced labor, combined with poor detention facilities and treatment, can constitute a violation of personal dignity amounting to inhuman

¹⁰⁸ *Hodžić* First Instance Verdict, para. 62 affirmed *Hodžić*, X-KR-07/430 (Ct. of BiH), Second Instance Verdict, 19 May 2010.

¹⁰⁹ *Kujundžić* First Instance Verdict, paras 376 & 405.

¹¹⁰ *Kujundžić* First Instance Verdict, paras 376, 405.

¹¹¹ *Kujundžić* First Instance Verdict, para. 406.

¹¹² *Prosecutor v. Boškoski & Tarčulovski*, IT-04-82, Judgment, 10 July 2008 (“*Boškoski & Tarčulovski* Trial Judgment”), para. 383.

¹¹³ *Boškoski & Tarčulovski* Trial Judgment, para. 383.

¹¹⁴ *Boškoski & Tarčulovski* Trial Judgment, para. 383.

¹¹⁵ *Vrdoljak* First Instance Verdict, p. 2.

treatment as a war crime.¹¹⁶ The forced labor in this case primarily consisted of trench digging on the front lines and the use of prisoners as human shields.¹¹⁷ The poor detention facilities consisted of overcrowding, insufficient heat, lack of blankets and beds, poor sanitation (three toilets, a few medical containers, and a latrine were used), and insufficient water.¹¹⁸

3. Torture

152. The Amended Indictment also alleges that the Accused Gasal and Kukavica committed torture by failing to prevent or punish the perpetration of the crime.

153. Common Article 3 and Additional Protocol II expressly prohibit the torture of persons who are not taking an active or direct part in hostilities.¹¹⁹ Therefore, any act that amounts to torture as a war crime will constitute a violation of international law.

154. Under ICTY jurisprudence, torture as a war crime consists of three elements:

1. the infliction, by act or omission, of severe pain or suffering, whether physical or mental;
2. the act or omission must be intentional;
3. the act or omission must have occurred in order to obtain information or a confession, or to punish, intimidate or coerce the victim or a third person, or to discriminate, on any ground, against the victim or a third person.¹²⁰

155. The Court of BiH has adopted the ICTY's definition of torture as a war crime,¹²¹ but also requires that at least one of the perpetrators "be a public official or must at any rate act in a non-private capacity, e.g. as a *de facto* organ of a State or any other authority-wielding entity".¹²² Importantly, as applied by the Court of BiH, the entity on

¹¹⁶ *Prosecutor v. Aleksovski*, IT-95-14-1/A, Judgment, 24 March 2000 ("*Aleksovski* Appeal Judgment"), para. 26 & fn. 286.

¹¹⁷ *Aleksovski* Appeal Judgment, para. 158 & fn. 286.

¹¹⁸ *Prosecutor v. Aleksovski*, IT-95-14-1/T, Judgment, 25 June 1999 ("*Aleksovski* Trial Judgment"), paras 154 - 176.

¹¹⁹ See e.g. Fourth Geneva Convention, Article 3(1)(a); APII, Art. 4(2)(a).

¹²⁰ *Brđanin* Trial Judgment, para. 481. See also *Prosecutor v. Kunarac et al.*, IT-96-23 & IT-96-23/1-A, Judgment, 12 June 2002 ("*Kunarac* Appeal Judgment"), para. 142 (quoting the definition of torture adopted by the Trial Chamber in *Kunarac et al.* at paragraph 497) and *Prosecutor v. Haradinaj et al.*, IT-04-84-A, Judgment, 19 July 2010, para. 290.

¹²¹ *Andrun* Second Instance Verdict, p. 26.

¹²² *Andrun* Second Instance Verdict, p. 27. See also *Hodžić* First Instance Verdict, para. 35.

behalf of which the accused is acting need not be a State entity, but can include a non-State armed group.¹²³

156. In evaluating whether the act or omission caused severe pain or suffering, the Court may consider the characteristics of the victim, such as physical or mental condition, age, sex, and position of inferiority.¹²⁴ Permanent injury is not required for a finding of torture.¹²⁵

157. The *Andrun* Appellate Panel upheld the conviction of a member of the HVO Brigade Knez Domagoj for torture as a war crime under Article 173 of the CC of BiH because he, *inter alia*, committed acts of torture in his capacity as Deputy Commander of a detention facility maintained by the HVO during the conflict between the HVO and the Army of BiH.¹²⁶ Hence, it appears that the requirement that the accused be acting in a “non-private capacity” does not mean that he must be acting in a public – i.e., governmental – capacity, but rather only mandates that he be acting on behalf of some “authority-wielding entity”.

158. The acts of torture at issue in *Andrun* involved beatings with a baton and with the hose of a fire extinguisher.¹²⁷ The Panel was satisfied that these actions caused severe physical and mental pain to the victims, who were detainees of the detention camp;¹²⁸ that the actions were taken “to the end of punishing on discriminatory grounds along the [*sic*] ethnic lines, intimidating or obtaining certain information”;¹²⁹ and, as stated above, that the Accused performed the acts in his role as Deputy Commander of the camp.¹³⁰ Notably, the Accused’s conviction in that case was based not only on beatings he carried out personally, but also incidents of torture carried out by others in the presence of the Accused and after the Accused had delivered the victims to the torturers.¹³¹ Specifically, the Panel found that by removing the prisoners from the hangar in which they were being held, turning the

¹²³ See e.g. *Andrun* Second Instance Verdict, pgs 21, 34-35.

¹²⁴ *Prosecutor v. Brdjanin*, IT-99-36-A, Judgment, 3 April 2007 (“*Brdjanin* Appeal Judgment”), para. 242.

¹²⁵ *Brdjanin* Appeal Judgment, para. 242 citing *Kvočka* Trial Judgment, para. 148.

¹²⁶ See e.g. *Andrun* Second Instance Verdict, pgs 21, 34-35.

¹²⁷ *Andrun* Second Instance Verdict, pgs 28-29.

¹²⁸ *Andrun* Second Instance Verdict, pgs 34-35.

¹²⁹ *Andrun* Second Instance Verdict, p. 35.

¹³⁰ *Andrun* Second Instance Verdict, p. 35.

¹³¹ *Andrun* Second Instance Verdict, p. 34.

prisoners over to the torturers, and passively observing these prisoners being tortured, “the Accused assumed all of the consequences”.¹³²

4. Forced Labor

159. Forcing detained persons to engage in labor related to an armed conflict is not necessarily a violation of international law. Indeed, Article (5)(1)(e) of Additional Protocol II expressly contemplates that “persons deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained” may be “made to work”.¹³³ Importantly, however, the provision goes on to state that detained persons who are compelled to work “shall [...] have the benefit of working conditions and safeguards similar to those enjoyed by the local civilian population”.¹³⁴ Furthermore, certain types of forced labor have been found to constitute cruel treatment in violation of Common Article 3 and Additional Protocol II.

160. In addition, the ICTY has held that “certain types of forced labour may amount to cruel and inhumane treatment if the conditions under which the labour is rendered are such as to create danger for the life and health of the civilians, or may arouse in them feelings of fear, and humiliation”, such as “placing them in life-threatening situations”.¹³⁵ The ICTY has also held that forced labor amounts to cruel treatment where the labor requires noncombatants to support military operations, including the digging of trenches, “against forces with whom those persons identify or sympathize”.¹³⁶

161. Finally, forced labor that amounts to humiliating or degrading treatment may constitute a violation of the prohibition against “outrages upon personal dignity” found in Common Article 3 and Additional Protocol II,¹³⁷ so long as the resulting humiliation of the victim is “so intense that any reasonable person would be outraged”.¹³⁸ In fact, the ICTY has found that “the use of detainees as human shields or trench-diggers

¹³² *Andrun* Second Instance Verdict, p. 34.

¹³³ APII, Art. 5(1)(e).

¹³⁴ APII, Art. 5(1)(e). See also Third Geneva Convention, Part III, Section III; Fourth Geneva Convention, Art. 40.

¹³⁵ *Prosecutor v. Simić*, IT-95-9-T, Judgment, 17 October 2003 (“*Simić* Trial Judgment”), para. 91.

¹³⁶ *Blaškić* Appeals Judgment, para. 597.

¹³⁷ See e.g. Fourth Geneva Convention, Art. 3(1)(c) (prohibiting “outrages upon personal dignity, in particular humiliating and degrading treatment” against persons taking no active part in hostilities); APII, Art.4(2)(e).

constitutes an outrage upon personal dignity”.¹³⁹ Hence, depending on the type of labor and the attendant conditions, forced labor may constitute a violation of international law and be considered as inhuman treatment.

162. The Court of BiH analyzed the war crime of forced labor under Article 173 in *Kovać*, where it held that “the force exerted in order to have the work done should be interpreted to involve the use or threat of physical violence, like the one that is caused by the fear of violence, coercion, imprisonment, physiological oppression or abuse of power, or by taking advantage of the circumstances surrounding the coercion”.¹⁴⁰ The important issue, according to the Panel, “is whether an individual who was allegedly compelled to forced labour, bearing mind the relevant circumstances, actually had any choice”.¹⁴¹

163. The Court also analyzed acts of forced labor underlying a charge of enslavement as a crime against humanity in *Rašević and Todović*.¹⁴² Specifically, the Trial Panel convicted Rašević, the commander of the prison guards at the Foča Correctional Penitentiary Institution (“KP Dom”) detention center, and Todović, the assistant warden of the prison, of the crime against humanity of enslavement based on their roles in forcing non-Serb detainees to perform labor both inside and outside the detention facility.¹⁴³ Notably, although the Trial Panel recognized that “some witnesses did testify that they worked voluntarily, or at least did not object”,¹⁴⁴ it rejected the Defense’s claim that the labor was not “forced or coerced”, stressing that, in the context of detention, labor may be deemed to be “forced” even if the detainees engaged willingly in the labor.¹⁴⁵ In fact, quoting the Elements of Crimes of the International Criminal Court’s Rome Statute, the Trial Panel held that “[t]he term ‘forcibly’ is not restricted to physical force, but may include threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons or another person, or by taking

¹³⁸ *Kunarac Appeals Judgment*, para. 162.

¹³⁹ *Aleksovski Trial Judgment*, para. 229.

¹⁴⁰ *Kovać First Instance Verdict*, p. 39 (emphasis added).

¹⁴¹ *Kovać First Instance Verdict*, p. 39.

¹⁴² *Rašević and Todović*, X-KR/06/275 (Ct. of BiH), First Instance Verdict, 28 February 2008, pgs 76 - 84.

¹⁴³ *Rašević and Todović First Instance Verdict*, pgs 76 - 84.

¹⁴⁴ *Rašević and Todović First Instance Verdict*, p. 81.

¹⁴⁵ *Rašević and Todović First Instance Verdict*, p. 82.

advantage of a coercive environment”.¹⁴⁶ The Trial Panel also rejected the Defense’s claim that the detainees were lawfully forced to work “pursuant to penal regulations and national law”, noting that “detainees at the KP Dom were unlawfully and arbitrarily imprisoned, and therefore no penal regulation or law applying to either lawful convicts or lawful prisoners of war could justify forcing the detainees to labor”.¹⁴⁷

5. Illegal arrests and detention

164. Unlike the other crimes discussed above, detention is not prohibited by either Common Article 3 or Additional Protocol II. In fact, Additional Protocol II expressly contemplates that persons may be “deprived of their liberty for reasons related to the armed conflict” in a non-international armed conflict.¹⁴⁸ While the ICRC has concluded that there is a customary rule of international law preventing the *arbitrary* detention of persons in non-international armed conflict,¹⁴⁹ in practical terms, the ICRC’s definition of arbitrary detention in non-international armed conflict is somewhat ambiguous. First, the ICRC states generally that arbitrary detention is inconsistent with the requirements under Common Article 3 and Additional Protocol II that all civilians and persons *hors de combat* (including fighters who have laid down their arms) be treated humanely,¹⁵⁰ and cites to human rights jurisprudence to conclude that a detention will be arbitrary if it is not based on valid, pre-existing reasons and conditions established by law and/or if the detaining party fails to comport with certain procedural requirements, including affording the detainee party the opportunity to challenge the detention in a judicial forum.¹⁵¹

165. Furthermore, the relevant ICRC study goes on to state the following:

all persons deprived of their liberty for reasons related to a non-international armed conflict must be given the opportunity to challenge the legality of the detention *unless the government of the State affected by the non-international armed conflict claimed for itself belligerent rights*, in which case captured enemy

¹⁴⁶ *Rašević and Todović* First Instance Verdict, p. 82 (emphasis added).

¹⁴⁷ *Rašević and Todović* First Instance Verdict, p. 82.

¹⁴⁸ APII, Art. 5.

¹⁴⁹ Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, International Committee of the Red Cross (2006), p. 344.

¹⁵⁰ Henckaerts and Doswald-Beck, *Customary International Humanitarian Law*, p. 344.

¹⁵¹ Henckaerts and Doswald-Beck, *Customary International Humanitarian Law*, pgs 347 - 352.

“combatants” should benefit from the same treatment as granted to prisoners of war in international armed conflicts and detained civilians should benefit from the same treatment as granted to civilian persons protected by the Fourth Geneva Convention in international armed conflicts.¹⁵²

166. This approach carries an intuitive appeal, as it would mean that, as in international armed conflict, “combatants”¹⁵³ in non-international armed conflicts could be detained for the duration of the conflict without any right to judicial review of their detention,¹⁵⁴ while civilians could only be detained where the security of the detaining party made detention absolutely necessary and would be entitled to periodic review of the detention decision.¹⁵⁵

167. In sum, therefore, while it seems possible that an act constituting arbitrary detention under one of the two approaches outlined by the ICRC could amount to a violation of customary international law as applied to non-international armed conflicts, there is significant ambiguity as to the application of the norm against arbitrary detention as defined by the ICRC and it requires a case by case analysis. The significance of this is that any arbitrary detention of an unarmed civilian could be the basis for a charge of illegal detention, but circumstances where the concern for security is a reasonable one based on specific facts involving the nature of a conflict may require a different conclusion.

168. Article 173 of the CC of BiH does not define the types of acts that would constitute illegal detention as a war crime, but the Court of BiH has held that, based on the “ordinary and commonly accepted meaning of the words” used in Article 173, illegal detention involves the “organized and mass forced imprisonment of civilians, with no legal procedure conducted or in absence of specific justified reasons arising

¹⁵² Henckaerts and Doswald-Beck, *Customary International Humanitarian Law*, p. 552 (emphasis added).

¹⁵³ Although the term “combatant” is not found in either Common Article 3 or Additional Protocol II, it is well-established that certain categories of persons lack the protections afforded to civilian in non-international armed conflict, and thus may be likened to combatants.

¹⁵⁴ The only review contemplated by the Third Geneva Convention is review by a “competent tribunal” where there is doubt as to whether a person qualifies as a prisoner of war. See Third Geneva Convention, Art. 5.

¹⁵⁵ See Fourth Geneva Convention, Art. 42 (“The internment or placing in assigned residence of protected persons may be ordered only if the security of the Detaining Power makes it absolutely necessary”.); Fourth Geneva Convention, Art. 78 (“Decisions regarding [...] assigned residence or internment shall be made according to a regular procedure to be prescribed by the Occupying Power in accordance with the provisions of the present Convention. This procedure shall include the right of appeal for the parties concerned. Appeals shall be decided with the least possible delay. In the event of the decision being upheld, it shall be subject to periodical review, if possible every six months, by a competent body set up by the said Power”).

from, for instance, extraordinary circumstances”.¹⁵⁶ Applying this definition to the facts, the Trial Panel in *Kovać* convicted the Accused of illegal detention based on his role in the arrest and detention of Bosniak civilians, stressing that these actions were “conducted in absence of any legal procedure” and that the detainees “were not given any valid reason for their deprivation of liberty and imprisonment (except some general and obviously untruthful ‘explanations’ given to some people, that they were imprisoned for their personal safety)”.¹⁵⁷ Similarly, the *Šakić* Trial Panel convicted the Accused of illegal detention based on a finding that the Accused participated in the arrest of Bosniak civilians, who were then detained in the cellar of a motel without any explanation as to the legal grounds for their detention.¹⁵⁸ Significantly, in both *Kovać* and *Šakić* the person convicted of illegal detention under Article 173 was a member of the non-State Croatian HVO,¹⁵⁹ although in neither case did the Trial Panel address how the detention at issue violated international law.

169. It is clear that the status of the detainees prior to detention must be examined on a case by case basis. Unarmed civilians, not militarily engaged, who are peacefully residing in their homes, are clearly entitled to some legitimate procedure and explanation for any detention. In the situation presented in this case there is a distinctly different set of facts. Here, immediately following the end of a conflict, HVO members and persons who had been militarily engaged, surrendered to government forces and laid down their arms. As recent fighters in a relatively small urban area there is, however, a need to secure these former fighters. At a minimum there needs to be a screening process to ensure that civilians who did not engage in the conflict are released. For those detained the period of detention must be reasonable under the circumstances. Finally, the detainees must be treated

¹⁵⁶ *Kovać* First Instance Verdict, p. 30. See also *Šakić*, X-KR/05/41-1 (Ct. of BiH), First Instance Verdict, 29 September 2008, p. 13 (“[I]n order to find unlawful detention of civilians, it is necessary to establish the existence of individual elements, primarily to establish that a person was deprived of liberty, then that the deprivation was done arbitrarily, meaning that there was no legal ground that would justify the deprivation of liberty, and that the act or omission by which an individual was deprived of liberty was committed by the Accused or persons under his responsibility, with an intention to deprive a person of his/her physical liberty, or being reasonably aware that his action or omission might cause arbitrary deprivation of physical liberty”).

¹⁵⁷ *Kovać* First Instance Verdict, pgs 30 - 32.

¹⁵⁸ *Šakić* First Instance Verdict, pgs 13 - 14.

¹⁵⁹ See e.g. *Šakić* First Instance Verdict, pgs 13 - 14 (convicting a member of the HVO Special Purposes Unit for illegal detention under Article 173); *Kovać* First Instance Verdict (convicting the commander of the Brigade Military Police of the HVO Vitez Brigade of illegal detention under Article 173).

humanely at all times. Here there was a legitimate need to detain these former fighters and provide for security of the wider population.

E. APPLICABLE MODES OF LIABILITY

1. Joint Criminal Enterprise

170. Individual Criminal Responsibility – Article 180(1) of CC of BiH:

A person who **planned, instigated, ordered, perpetrated** or otherwise **aided and abetted** in the planning, preparation or execution of a criminal offence referred to in Article 171 (Genocide)... of this code, shall be personally responsible for the criminal offence. The official position of any accused person, whether as Head of State or Government or as a responsible Government official person, shall not relieve such person of criminal responsibility nor mitigate punishment.¹⁶⁰

171. Article 180 establishes the mode of criminal liability that the Panel must find in order to convict persons for crimes specifically referenced within Article 180.¹⁶¹ It has been charged together with Article 29 of Chapter 5 of the CC of BiH, which provides for the manner of commission and degrees of liability for commission of offences.¹⁶²

172. Article 180(1) is derived from and is identical to Article 7(1) of the ICTY Statute. Article 180(1) became part of the CC of BiH after 7(1) had been enacted and interpreted by the ICTY to include, specifically, joint criminal enterprise as a mode of co-perpetration by which personal criminal liability would attach.¹⁶³

173. The international interpretation of the term “perpetrated” in Article 7(1), which was incorporated into domestic law as Article 180(1), provides: (1) that JCE is a form of co-perpetration that establishes personal criminal responsibility; (2) that “perpetration” as it appears in Article 7(1) of the ICTY Statute (and hence also in Article 180(1) of the CC of BiH) includes knowing participation in a joint criminal enterprise; and (3) that the elements of JCE are established in customary international law and discernable. This Panel, in applying the term “perpetrated” in

¹⁶⁰ (Emphasis added).

¹⁶¹ *Rašević and Todović* First Instance Verdict, p. 103.

¹⁶² *Rašević and Todović* First Instance Verdict, p. 103.

¹⁶³ *Rašević and Todović* First Instance Verdict, p. 103.

Article 180(1) must consider the definition of that term as it was understood when it was adopted from international law into the CC of BiH.¹⁶⁴

2. Rationale for Joint Criminal Enterprise

174. There have been a number of cases at both first and second instance levels in the Court of BiH which have considered this doctrine both utilizing it and discarding it as a mode of liability. This Panel still finds it necessary to give some background and rationale for the recognition of joint criminal enterprise. It was the ICTY Appeals Chamber that first articulated in *Prosecutor v. Tadić* the doctrine of joint criminal enterprise as a “fully fledged legal construct of modes of criminal liability”.¹⁶⁵ This judgment also spelled out the three categories of joint criminal enterprise which will be discussed below. The ICTY Appeals Chamber noted that Article 7(1) includes joint criminal enterprise as a mode of co-perpetration because it was warranted by the nature of the crimes which are committed most commonly in wartime situations.¹⁶⁶ Generally, these crimes do not result from the criminal propensity of single individuals but are manifestations of collective criminality, carried out by groups of individuals acting in pursuance of a common criminal design.¹⁶⁷ Although only some members of the group physically perpetrate the criminal act, the participation and contribution of the other members of the group is often vital in facilitating its commission.¹⁶⁸ “It follows that the moral gravity of such participation is often no less – or indeed no different- from that of those actually carrying out the acts in question”.¹⁶⁹

175. “The rationale behind JCE liability is to reflect the exact degree of responsibility of those who in some way made it possible for the perpetrators physically to carry out the criminal acts”.¹⁷⁰ Specifically, “to hold criminally liable as a perpetrator only the person who materially performs the criminal act would disregard the role as co-perpetrators of all those who in some way made it possible for the

¹⁶⁴ The Constitutional Court of BiH has held that the ICTY Statute is an “integral part of the legal system of Bosnian and Herzegovina” as it is one of the documents that regulates the application of international law to which BiH is subject under Article III(3)(b) of the Constitution of BiH. *Maktouf* Const. Ct. Decision, para. 70.

¹⁶⁵ Antonio Cassese, *International Criminal Law* (Oxford University Press) (2008) p. 191.

¹⁶⁶ *Prosecutor v. Tadic*, IT-95-1-A, Judgment, 15 July 1999 (“*Tadic* Appeal Judgment”), para. 191.

¹⁶⁷ *Tadic* Appeal Judgment, para. 191.

¹⁶⁸ *Tadic* Appeal Judgment, para. 191.

¹⁶⁹ *Tadic* Appeal Judgment, para. 191.

¹⁷⁰ *Brđanin* Appeal Judgment, para. 405.

perpetrator physically to carry out that criminal act. At the same time, depending upon the circumstances, to hold the latter liable only as aiders and abettors might understate the degree of their criminal responsibility".¹⁷¹ As a result, "international criminal responsibility embraces actions perpetrated by a collectivity of persons in furtherance of a common criminal design".¹⁷² This reasoning justified the recognition of an implied form of participation or complicity not explicitly set out in Article 7(1), sometimes described as "common purpose" or "common design" and now commonly known as "joint criminal enterprise".¹⁷³

176. In this instance the Panel will detail below the contours of the JCE as defined by the evidence presented.

177. Joint criminal enterprise is not a crime itself, but a manner of commission of a crime.¹⁷⁴ If an Accused is charged with co-perpetrating a crime as part of a joint criminal enterprise, the Prosecutor must prove beyond reasonable doubt that a crime has actually been perpetrated, that its perpetration was achieved by those operating together in a joint criminal enterprise, and that the elements necessary to establish the Accused's liability for that perpetration have been met.¹⁷⁵

178. Joint criminal enterprise generally, and basic joint criminal enterprise in particular, were already part of customary international law by July 1995, and the elements and definition were established.¹⁷⁶ Since that time, the Trial Chambers and Appeals Chamber of the Tribunal have had several occasions to apply the concept of joint criminal enterprise, and particularly "basic" or "general" JCE.¹⁷⁷ In so doing they have refined, but not changed, the understanding of general JCE and systemic JCE within the context of the conflict within the former Yugoslavia. This Panel is not bound by the decisions of the ICTY. However, the Panel is persuaded that the

¹⁷¹ *Tadic* Appeal Judgment, para. 192.

¹⁷² *Tadic* Appeal Judgment, para. 193.

¹⁷³ William Schabas, *The UN International Criminal Tribunals: The former Yugoslavia, Rwanda and Sierra Leone* (Cambridge University Press) (2006), p. 309.

¹⁷⁴ *Rašević and Todović* First Instance Verdict, p. 111.

¹⁷⁵ *Rašević and Todović* First Instance Verdict, p. 111.

¹⁷⁶ *Prosecutor v. Tadic*, IT-95-1-T, Judgment, 7 May 1997 ("*Tadic* Trial Judgment"), para. 669. *Tadic* Appeal Judgment, para. 220; *Stakic* Appeal Judgment, para. 62; *Prosecutor v. Vasiljevic*, IT-98-32-A, Appeal Judgment, 23 February 2004 ("*Vasiljevic* Appeal Judgment"), para. 96 - 99.

¹⁷⁷ See e.g. *Prosecutor v. Krstić*, IT-02-60-T, Judgment, 2 August 2001 ("*Krstić* Trial Judgment"); *Simić* Trial Judgment; *Brđanin* Trial Judgment; *Brđanin* Appeal Judgment.

ICTY's characterization of general JCE,¹⁷⁸ its elements, *mens rea* and *actus reus*, properly reflects the state of customary international law as it existed in July 1995 and thereafter.

179. The *Tadić* Appeals Chamber was the first to identify and articulate the three categories of JCE in existence in international law at the operative time. Future ICTY Chambers identified these categories as “general” (or “basic”), “systemic” and “extended”. This verdict is only concerned with the basic or general form of JCE.

180. The Second Instance Panel in *Rašević and Todović* affirmed the First Instance Verdict, inasmuch as the Trial Panel concluded that joint criminal enterprise liability was part of customary international law at the time the offenses in the proceeding were committed (April 1992 through October 1994).¹⁷⁹ It is important to note that the *Rašević and Todović* First Instance Panel expressly did not consider whether the “extended” form (also referred to as JCE III) of joint criminal enterprise liability was part of customary international law between 1992 and 1995.¹⁸⁰ The *Miloš Stupar, et al* and *Milorad Trbic* Panels also found it unnecessary to consider the applicability of this mode of liability to the Court of BiH. The current Panel similarly finds it unnecessary to reach this question in this case.

181. The basic or general form of JCE is characterized by a group of people who act together pursuant to a “common design” and possess the same criminal intent. If a crime is committed by such a group, pursuant to that common design, persons who voluntarily participated in an aspect of that design and intended the criminal outcome can be held personally criminally liable as co-perpetrators.¹⁸¹ “An example is a plan formulated by the participants in the joint criminal enterprise to kill where, although each of the participants may carry out a different role, each of them has the intent to kill”.¹⁸²

¹⁷⁸ The ICTY has referred to general or basic JCE as JCE I and systemic JCE as JCE II. For clarity, this Verdict uses the terms “basic JCE” and “systemic JCE”.

¹⁷⁹ *Rašević and Todović*, X-KR/06/275 (Ct. of BiH), Second Instance Verdict, 6 November 2008, p. 26. See also *Rašević and Todović* First Instance Verdict, p. 111.

¹⁸⁰ *Rašević and Todović* First Instance Verdict, p. 111.

¹⁸¹ *Tadić* Appeal Judgment, para. 196.

¹⁸² *Vasiljević* Appeal Judgment, para. 97.

182. The elements of JCE which are discernable from the customary international law are easily identified. The *actus reus* requires:¹⁸³

1. A **plurality of individuals**. They need not be organized in a military, political or administrative structure, as is demonstrated.

2. **The existence of a common purpose which amounts to or involves the commission of a crime provided for in the Statute.** There is no necessity for this plan, design or purpose to have been previously arranged or formulated. It may materialize extemporaneously and be inferred from the fact that a plurality of persons acts in unison to put into effect a joint criminal enterprise.

3. **Participation of the accused in the common purpose involving the perpetration of one of the crimes provided in the Statute.** This participation need not involve commission of a specific crime under one of the provisions (murder, extermination, torture, rape, etc), but may take the form of assistance in, or contribution to, the execution of the common plan or purpose. The contribution need not be necessary or substantial, but should at least be a **significant contribution** to the crimes for which the accused is found responsible.¹⁸⁴

183. The *Brđanin* Appeals Chamber explained that a Trial Chamber “must, among other things: identify the plurality of persons belonging to the JCE (even if it is not necessary to identify by name each of the persons involved); specify the common criminal purpose in terms of both the criminal goal intended and its scope (for example, the temporal and geographic limits of this goal, and the general identities of the intended victims)”.¹⁸⁵ Additionally, the Trial Chamber must “make a finding that this criminal purpose is not merely the same, but also common to all of the persons acting together within a joint criminal enterprise;¹⁸⁶ and characterize the contribution of the accused in this common plan”.¹⁸⁷ Again, the contribution to the crimes for which the accused is to be found responsible should at least be significant.¹⁸⁸

184. The Panel notes that the Appeals Chamber of the Special Court of Sierra Leone listed factors derived from ICTY jurisprudence relevant to the determination that a criminal purpose is not merely the same, but common, to all of the persons

¹⁸³ See generally, *Prosecutor v. Krnojelac*, IT-97-25-A, Judgment, 17 September 2003 (“*Krnojelac* Appeal Judgment”), para. 31; *Vasiljevic* Appeal Judgment, para. 100.

¹⁸⁴ *Brđanin* Appeal Judgment, para. 414; *Prosecutor v. Krajišnik*, IT-00-39-A, Judgment, 17 March 2009 (“*Krajišnik* Appeal Judgment”), para. 215.

¹⁸⁵ *Brđanin* Appeal Judgment, para. 430.

¹⁸⁶ *Brđanin* Appeal Judgment, para. 430 citing *Stakić* Appeal Judgment, para. 69.

¹⁸⁷ *Brđanin* Appeal Judgment, para. 430.

¹⁸⁸ *Brđanin* Appeal Judgment, para. 430.

acting together within a joint criminal enterprise.¹⁸⁹ These factors include, but are not limited to: the manner and degree of interaction, cooperation and communication (joint action) between those persons;¹⁹⁰ the manner and degree of mutual reliance by those persons on each other's contributions to achieve criminal objectives that they could not have achieved alone;¹⁹¹ the existence of a joint decision-making structure;¹⁹² the degree and character of dissension; and the scope of any joint action as compared to the scope of the alleged common criminal purpose.¹⁹³ The Panel must find that persons alleged to constitute the plurality of persons joined together to achieve their common goal.¹⁹⁴

185. A person who participates in a joint criminal enterprise in any of the following ways may be found guilty for the crime committed, all other conditions being met:¹⁹⁵

- (i) by participating directly in the commission of the agreed crime itself (as a principal offender);
- (ii) by being present at the time when the crime is committed, and (with knowledge that the crime is to be or is being committed) by intentionally assisting or encouraging another participant in the joint criminal enterprise to commit that crime; or
- (iii) by acting in furtherance of a particular system in which the crime is committed by reason of the accused's position of authority or function, and with knowledge of the nature of that system and intent to further that system.

186. This list is not necessarily exhaustive. The *Vasiljević* Appeals Chamber explained that it is generally sufficient for a participant in a joint criminal enterprise to perform acts that in some way are directed to the furtherance of the common design.¹⁹⁶ If the agreed crime is committed by one or another of the participants in

¹⁸⁹ *Prosecutor v. Sesay et al*, SCSL-04-15-A, Judgment, 26 October 2009 ("Sesay Appeal Judgment"), para. 1141.

¹⁹⁰ See *Brđanin* Appeal Judgment, para. 410 (holding that whether a crime forms part of the common purpose may be inferred from the "fact that the accused or any other member of the JCE closely cooperated with the principle perpetrator in order to further common criminal purpose"); *Prosecutor v. Krajišnik*, IT-00-39-T, Judgment, 27 September 2006 ("*Krajišnik* Trial Judgment"), para. 884.

¹⁹¹ *Krajišnik* Trial Judgment, para. 1082.

¹⁹² That the plurality of persons "need not be organized in a military, political or administrative structure" as a matter of law does not imply that the presence or absence of such a structure is not a relevant evidentiary consideration. *Vasiljević* Appeal Judgment, para. 100; *Tadić* Appeal Judgment, para. 227.

¹⁹³ See *Brđanin* Appeal Judgment, para. 430 (the trier of fact must "specify the common criminal purpose in terms of both the criminal goal intended and its scope (for example, the temporal and geographic limits of this goal, and the general identities of the intended victims)").

¹⁹⁴ *Martić* Appeal Judgment, para. 172; *Brđanin* Appeal Judgment, para. 431

¹⁹⁵ *Krnojelac* Trial Judgment, para. 81.

¹⁹⁶ *Vasiljević* Appeal Judgment, para. 102.

the joint criminal enterprise, all of the participants in the enterprise are guilty of the crime regardless of the part played by each in its commission.¹⁹⁷ However, all persons (principal perpetrators) who carry out the *actus reus* of the crimes do not have to be members of a joint criminal enterprise.¹⁹⁸ At the same time, it is not necessary that an accused be present when the crime is committed in order to be guilty of the crime as a member of JCE.¹⁹⁹

187. An accused or another member of a JCE may use the principal perpetrators to carry the *actus reus* of a crime.²⁰⁰ However, “an essential requirement in order to impute to any accused member of the JCE liability for a crime committed by another person is that the crime in question forms part of the common criminal purpose”.²⁰¹ This maybe inferred, *inter alia*, from the fact that “the accused or any other member of the JCE closely cooperated with the principal perpetrator in order to further the common criminal purpose”.²⁰²

188. The requisite *mens rea* for general JCE is that the accused must both intend the commission of the crime (this being the shared intent on the part of all co-perpetrators)²⁰³ and intend to participate in a common plan aimed at its commission.²⁰⁴ If the common criminal purpose involves commission of a crime that requires specific intent, for example, persecution, then the participant must share that specific intent.²⁰⁵ However, shared intent, even specific intent, may be inferred.²⁰⁶

189. Finally, as the Panel in *Miloš Stupar, et al* concluded:

Neither case law nor the literature support the proposition that a single basic JCE can stretch from the highest echelons of the military leadership to the lowliest foot

¹⁹⁷ *Krnojelac* Trial Judgment, para. 82.

¹⁹⁸ *Brđanin* Appeal Judgment, para. 414.

¹⁹⁹ *Krnojelac* Appeal Judgment, para. 81.

²⁰⁰ *Martić* Appeal Judgment, para. 68 citing *Prosecutor v. Martić*, IT-95-11-T, Judgment, 12 June 2007 (“*Martić* Trial Judgment”), para. 438.

²⁰¹ *Martić* Appeal Judgment, para. 68 citing *Martić* Trial Judgment, para. 438; *Brđanin* Appeal Judgment, para. 418.

²⁰² *Martić* Appeal Judgment, para. 68 citing *Martić* Trial Judgment, para. 438; *Brđanin* Appeal Judgment, para. 410.

²⁰³ *Vasiljević* Appeal Judgment, paras 97, 101; *Krnojelac* Appeal Judgment, para. 31.

²⁰⁴ *Brđanin* Appeal Judgment, para. 356 citing *Kvočka* Appeal Judgment, para. 82 (requiring “intent to effect the common purpose”).

²⁰⁵ *Kvočka* Trial Judgment, para. 288.

²⁰⁶ *Kvočka* Trial Judgment, para. 288.

soldier including persons with such disparate roles and parts assigning them *all the same level of criminal responsibility*.²⁰⁷

190. This mode of liability is not appropriate for every case or every accused. It is cautiously applied to certain actors whose actions and intent meet the criteria.

3. Commission and Omission

191. The *actus reus* required for committing a crime is that “[...] the accused participated, physically or otherwise directly or indirectly, in the material elements of the crime charged through positive acts or, based on a duty to act, omissions, whether individually or jointly with others.²⁰⁸ The accused himself need not have participated in all aspects of the alleged criminal conduct”.²⁰⁹ There can be several perpetrators who may be said to have “committed” the same crime if “[...] the conduct of each one of them fulfills the requisite elements of the definition of the substantive offence”.²¹⁰

192. The requisite *mens rea* “[...] is that the accused acted with an intent to commit the crime”²¹¹ or, as in other forms of criminal participation under Article 7(1) (or in our case, Article 180(1) of the CC of BiH) he must have been aware of “the substantial likelihood that a criminal act or omission would occur as a consequence of his conduct”.²¹² Similarly, the ICTY Appeals Chamber has found that an accused can make a contribution to a JCE by omission.²¹³

4. Aiding and abetting by omission

193. “Aiding and abetting” has been defined as the act of rendering practical assistance, encouragement or moral support, which has a substantial effect on the

²⁰⁷ See e.g. Cassese, *International Criminal Law*, pgs 209-210.

²⁰⁸ *Prosecutor v. Stakic*, IT-97-2-T, Judgment, 31 July 2003 (“*Stakic Trial Judgment*”), para. 439; *Prosecutor v. Limaj et al.*, IT-03-66-T, Judgment, 30 November 2005 (“*Limaj Trial Judgment*”), para. 509; *Kvočka Trial Judgment*, para. 251.

²⁰⁹ *Stakic Trial Judgment*, para. 439.

²¹⁰ *Prosecutor v. Kunarac et al*, IT-96-23-T & IT-96-23/1, Judgment, 22 February 2001, para. 390.

²¹¹ *Limaj Trial Judgment*, para. 188.

²¹² *Kvočka Trial Judgment*, para. 251; *Limaj Trial Judgment*, para. 509.

²¹³ *Kvočka Appeal Judgment*, para. 187.

perpetration of a certain crime.²¹⁴ Strictly, “aiding” and “abetting” are not synonymous.²¹⁵ “Aiding” involves the provision of assistance; “abetting” need involve no more than encouraging, or being sympathetic to, the commission of a particular act.²¹⁶ These forms of liability have, however, been consistently considered together in the jurisprudence of the ICTY.²¹⁷

(a) Actus reus

194. The aider and abettor carries out acts or omissions directed to assist, encourage or lend moral support to the perpetration of a certain specific crime (murder, extermination, rape, torture, etc.), and this support has a substantial effect upon the perpetration of the crime.²¹⁸ To determine whether conduct substantially assists the commission of a crime requires a fact-based inquiry.²¹⁹ The ICTY Appeals Chamber has determined that “the *actus reus* of aiding and abetting may be satisfied by a commander permitting the use of resources under his or her control, including personnel, to facilitate the perpetration of a crime”.²²⁰ Furthermore, the fact the aider and abettor’s conduct amounted to no more than his “routine duties” does not exculpate him, if such conduct substantially contributed to the commission of the crime.²²¹

195. There is no requirement that there be a cause-effect relationship between the conduct of the aider and abettor and the commission of the crime or that such conduct served as a condition precedent to the commission of the crime.²²² The *actus reus* of aiding and abetting a crime may occur before, during or after the

²¹⁴ *Limaj* Trial Judgment para. 516 citing *Krstic* Trial Judgment, para 601; *Aleksovski* Appeals Judgment, para 162 citing *Prosecutor v. Furundžija*, IT-95-17/1, Judgment, 10 December 2008 (“*Furundžija* Trial Judgment”), para. 249.

²¹⁵ *Limaj* Trial Judgment para. 516 citing *Kvočka* Trial Judgment, para. 254.

²¹⁶ *Limaj* Trial Judgment para. 516 citing *Kvočka* Trial Judgment, para. 254.

²¹⁷ *Limaj* Trial Judgment para. 516.

²¹⁸ *Prosecutor v. Mrkšić & Šljivančanin*, IT-95-12/1, Judgment, 5 May 2009 (“*Mrkšić & Šljivančanin* Appeal Judgment”), para. 81.

²¹⁹ *Prosecutor v. Blagojević & Jokić*, IT-02-60-A, Judgment, 9 May 2007 (“*Blagojević & Jokić* Appeal Judgment”), para. 134.

²²⁰ *Blagojević & Jokić* Appeal Judgment, para. 127. *Prosecutor v. Krstić*, IT-98-33-A, Judgment, 19 April 2004 (“*Krstić* Appeals Judgment”), paras 137, 138 & 144.

²²¹ *Perišić* Trial Judgment, para. 128 citing *Blagojević & Jokić* Appeal Judgment, para.189.

²²² *Prosecutor v. Perišić*, IT-04-81-PT, Judgment, 6 September 2011 (“*Perišić* Trial Judgment”), para. 126 citing *Mrkšić & Šljivančanin* Appeal Judgment, para. 81. See also *Blagojević & Jokić* Appeal Judgment, paras 127, 134; *Blaškić* Appeal Judgment, para. 48; *Nahimana et al. v. The Prosecutor*, ICTR-99-52-A, Judgment, 28 November 2007 (“*Nahimana* Appeal Judgment”), para. 482.

principal crime has been perpetrated²²³ and at a location which is removed from that where the principle crime is committed.²²⁴

196. The aider and abettor is always an accessory to the crime perpetrated by another person, the principal perpetrator.²²⁵ For an accused to be liable for aiding and abetting, the underlying crime must ultimately be committed by the principle perpetrator.²²⁶ However, it is not necessary that the later be identified or tried, even in cases of crimes requiring specific intent.²²⁷ It is also not necessary that the principal perpetrator be aware of the aider and abettor's contribution to the crime.²²⁸

(b) Mens Rea

197. The requisite *mens rea* for aiding and abetting is knowledge (in the sense that he was aware) that the acts performed by the aider and abettor assist in the commission of the specific crime of the principal.²²⁹ It is not necessary that the accused shared the intent of the principal offender,²³⁰ but he must be aware of the essential elements of the crime, including the principal's mental state,²³¹ and he must have taken the conscious decision to act in the knowledge that he would thereby support the commission of the crime.²³²

198. The ICTY Appeals Chamber has consistently held that:

it is not necessary that the aider and abettor knows the precise crime that was intended or one that was, in the event, committed. If he is aware that one of a number of crimes will probably be committed, and one of those crimes is in fact

²²³ *Perišić* Trial Judgment, para. 126 citing *Mrkšić & Šljivančanin* Appeal Judgment, para. 81. See also *Prosecutor v. Simić*, IT-95-9-A, Judgment, 28 November 2006 ("*Simić* Appeal Judgment"), para. 85; *Blagojević & Jokić* Appeal Judgment, para 127; *Blaškić* Appeal Judgment, para. 48.

²²⁴ *Perišić* Trial Judgment, para. 126 citing *Mrkšić & Šljivančanin* Appeal Judgment, para. 81. See also *Blaškić* Appeal Judgment, para. 48.

²²⁵ *Perišić* Trial Judgment, para. 127 citing *Tadić* Appeal Judgment, para. 229.

²²⁶ *Perišić* Trial Judgment, para. 127.

²²⁷ *Perišić* Trial Judgment, para. 127 citing *Prosecutor v. Milutinović et al.* IT-05-87-T, Judgment, 26 February 2009 ("*Milutinović* Trial Judgment"), para. 92.

²²⁸ *Perišić* Trial Judgment, para. 127 citing *Tadić* Appeal Judgment, para. 229. See all *Milutinović* Trial Judgment, para. 94.

²²⁹ *Blaškić* Appeal Judgment para. 45. See also *Vasiljević* Appeals Judgment, para. 102; *Brdjanin* Trial Judgment, para. 272.

²³⁰ *Aleksovski* Appeals Judgment, para. 162; *Kunarac* Trial Judgment, para. 392; *Furundžija* Trial Judgment, para. 245.

²³¹ *Aleksovski* Appeals Judgment, para. 162; *Limaj* Trial Judgment, para. 518.

²³² *Prosecutor v. Vasiljević* IT-98-32-T, Judgment, 29 November 2002 ("*Vasiljević* Trial Judgment"), para. 71. See also *Kunarac* Trial Judgment, para. 392.

committed, he has intended to facilitate the commission of that crime, and is guilty as an aider and abettor.²³³

199. The ICTY Appeals Chamber recently reaffirmed its rejection of an elevated *mens rea* requirement for aiding and abetting, noting that an aiders and abettors do not need to have intended to provide assistance.²³⁴

200. In cases of specific intent crimes, the aider and abettor must know of the principal perpetrator's specific intent.²³⁵

(i) Omission

201. The Trial Panel recalls that the *actus reus* may, under certain circumstances, take the form of an omission.²³⁶ The ICTY Appeals Chamber has consistently indicated that an accused may incur criminal responsibility under Article 7(1) for omission where there is a legal duty to act.²³⁷ Recently, the *Mrkšić & Šljivančanin* Appeals Chamber in found that the Trial Chamber had "properly considered aiding and abetting by omission as a recognized mode of liability under the International Tribunal's jurisdiction".²³⁸

202. The *actus reus* and *mens rea* requirements of aiding and abetting by omission are the same as for aiding and abetting by a positive act.²³⁹ The *actus reus* will be satisfied when it is established that, given the circumstances of the case, the failure to discharge a legal duty to act was directed to assist, encourage or lend

²³³ *Perišić* Trial Judgment, para. 130 citing *Simić* Appeal Judgment, para. 86. See also *Mrkšić & Šljivančanin* Appeal Judgment, para. 49; *Blaškić* Appeal Judgment, para. 49 citing *Furundžija* Trial Judgment, para. 246; *Ndindabahizi* Appeal Judgment, para. 122.

²³⁴ *Perišić* Trial Judgment, para. 130 citing *Mrkšić & Šljivančanin* Appeal Judgment, para. 159. See also *Blaškić* Appeal Judgment, para. 49 citing *Vasiljević* Appeal Judgment, para. 102; *Blagojević & Jokic* Appeal Judgment, para. 222.

²³⁵ *Perišić* Trial Judgment, para. 132 citing *Blagojević & Jokic* Appeal Judgment, para. 127. See also *Simić* Appeal Judgment, para. 86; *Krstić* Appeal Judgment, paras 140 - 141.

²³⁶ *Blaškić* Appeal Judgment, paras 47 & 663.

²³⁷ *Perišić* Trial Judgment, para. 133 citing *Mrkšić & Šljivančanin* Appeal Judgment, paras 134 - 135. See also *Orić* Appeal Judgment, para. 43; *Brđanin* Appeal Judgment, para. 274; *Galić* Appeal Judgment, para. 175; *Blaškić* Appeal Judgment, para. 47, 663-664; *Nahimana* Appeal Judgment, para. 482. As to the legal duty to act, the Appeals Chamber has, for instance, held that the breach of a legal duty imposed by laws and customs of war give rise to individual criminal responsibility, *Mrkšić & Šljivančanin* Appeal Judgment, paras 93 - 94, 151.

²³⁸ *Perišić* Trial Judgment, para. 133 citing *Mrkšić & Šljivančanin* Appeal Judgment, para. 135.

²³⁹ *Perišić* Trial Judgment, para. 134 citing *Mrkšić & Šljivančanin* Appeal Judgment, paras 49, 81, 93-94, 146 & 156. See also *Prosecutor v. Orić*, IT-03-68-A, Judgment, 3 July 2008 ("*Orić* Appeal Judgment"), para. 43; *Brđanin* Appeal Judgment, para. 274.

moral support to the perpetration of the crime and had a substantial effect on the realization of that crime.²⁴⁰ With respect to *mens rea* “the aider and abettor must know that his omission assists in the commission of the crime of the principal perpetrator and must be aware of the essential elements of the crime which was ultimately committed by the principal perpetrator”.²⁴¹

203. The ICTY Appeals Chamber held that this form of liability necessarily and implicitly requires that the accused had the ability to act, i.e. that “there were means available to the accused to fulfill [his legal] duty”.²⁴²

204. The Trial Panel notes that the ICTY Appeals Chamber in *Brđanin* drew a distinction between aiding and abetting by omission where there is a legal duty to act, and aiding and abetting by tacit approval and encouragement,²⁴³ which requires the accused to have held a position of authority over the principal perpetrator and be present at the scene of the crime.²⁴⁴ This combination allows the Court to infer that non-intervention amounted to tacit approval and encouragement.²⁴⁵

5. Command Responsibility (Article 180(2) of the CC of BiH)

205. Article 180(2) of the CC of BiH provides:

The fact that any of the criminal offenses referred to in Article 171 through 175 and Article 177 through 179 of this Code was perpetrated by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

206. The Trial Panel recalls that the First Instance Panel in *Rašević and Todović* stated that the elements of Command Responsibility set out in the CC of Article

²⁴⁰ *Perišić* Trial Judgment, para. 134 citing *Mrkšić & Šljivančanin* Appeal Judgment, paras 49 & 146.

²⁴¹ *Perišić* Trial Judgment, para. 134 citing *Mrkšić & Šljivančanin* Appeal Judgment, paras 49 & 146.

²⁴² *Perišić* Trial Judgment, para. 135 citing *Mrkšić & Šljivančanin* Appeal Judgment, para. 154.

²⁴³ *Perišić* Trial Judgment, para. 136 citing *Brđanin* Appeal Judgment, paras 273 - 274; *Prosecutor v. Ntagerura et al.*, ICTR-99-46-A, Judgment, 7 July 2006 (“*Ntagerura* Appeal Judgment”), para. 338. See also *Aleksovski* Trial Judgment, para. 87; *Prosecutor v. Akayesu*, ICTR-96-4-T, Judgment, 2 September 1998 (“*Akayesu* Trial Judgment”), para. 706.

²⁴⁴ *Perišić* Trial Judgment, para. 136.

²⁴⁵ *Perišić* Trial Judgment, para. 136 citing *Brđanin* Appeal Judgment, para. 273. See also *Kayishema & Ruzindana* Trial Judgment, para. 200; *Furundžija* Trial Judgment, paras 207 - 209.

180(2) are identical to those recognized by customary international law at the time of the commission of the offenses.²⁴⁶ These are:

1. The commission of a criminal act of the type set out in the applicable sections (which include genocide, war crimes and crimes against humanity).
2. The existence of a superior/subordinate relationship between the Accused and the perpetrators who carried out the criminal act.
3. The superior knew or had reason to know:
 - a. the subordinate was about to commit the crime; or
 - b. had committed the crime.
4. The superior failed to take reasonable and necessary measures to:
 - a. prevent the crime; or
 - b. punish the perpetrator of the crime.

207. The elements of command responsibility were already established in customary international law by April 1992.²⁴⁷ The ICTY recognized this to be in the case in a series of decisions, beginning with the judgment the Trial Chamber rendered on 16 November 1998 in the *Celebici* case.²⁴⁸

²⁴⁶ *Rašević and Todović*, First Instance Verdict, pgs 114-115 affirmed *Rašević and Todović* Second Instance Verdict.

²⁴⁷ See *Rašević and Todović* First Instance Verdict, pgs 113 - 115.

²⁴⁸ *Prosecutor v. Delalić et al.*, IT-96-21-T, Judgment, 16 November 1998 (“*Delalić* Trial Judgment”), para. 343. See also *Rašević and Todović* First Instance Verdict, p. 115.

VI. ROLE OF MILITARY / CIVILIAN AUTHORITIES

208. The role and structure of the military and civilian authorities in this area during the relevant period was unique, as it deviated from the conventional structure of military and civilian authorities in other parts of Bosnia and Herzegovina under the control of the BiH Army at the time.

209. To aid in a comprehensive understanding of the military organization, the Panel adopted a series of established facts which are incorporated by reference here. The 25 February 2011 decision located in the Annex gives detailed findings on the role of the military and civilian authorities.

210. Additionally, Fikret Muslimović testified to the following:

211. In terms of the military organization and establishment, Bugojno was in the AOR of the 3rd Corps, which was an extensive AOR and included many brigades. This necessitated the formation of five operative groups, including Operative Group West comprised of the 306th, 307th, 308th, 312th and 317th Brigade. Selmo Cikotić was the commander of the OG West. There were four command posts in Bugojno: OG West, the 307th brigade, Bugojno Defense Staff and “*the Bugojno Municipality Joint Unified*” Command. The Commander of OG West had a clear chain of command which was not part of the so called “*Bugojno Municipality Joint Unified Command of the Army of RBiH*”.²⁴⁹ This later group has no precedent and was created in response to the local conflict.

212. The Decree Law on Defense anticipated the formation of a wartime presidency of the municipal assembly, referred to as the Municipal Wartime Presidency.²⁵⁰ The wartime presidency was comprised of the chairperson of the municipal assembly, chairperson of the executive board of the municipal assembly, head of the department of the Ministry of Defense, chief of the public security station

²⁴⁹ O-8/3 (Findings and opinion of the expert witness Fikret Muslimović, February – March 2011).

²⁵⁰ Article 34 of the Decree Law on Defense, 14 May 1992 (Official Gazette of the RBiH, 20 May 1992 issue).

in the municipality, commander of the Civil Protection Staff and representatives of the caucuses in the municipal assembly.²⁵¹

213. The Wartime Presidency coordinated and directed the activities of the *civilian* elements in the defense system. Based on this, representatives of the Command of the 307th Brigade and the Command of the OG West were not official members of the Wartime Presidency of the Bugojno Municipality. Management in the armed forces was referred to as command and control, and fell under the exclusive jurisdiction of military command structure and military commanders, which was known as the chain of command and control. Representatives of the command structure and units of the ARBiH could not be members of the wartime presidencies in the local municipalities because by their very nature these military structures, such as the 307th Brigade, could be deployed and engaged in any part of the BiH theatre of war. They could not, in terms of organization, be attached to any local or regional authorities, including the Wartime Presidency of the Bugojno Municipality. This meant that the relationship between the Wartime Presidency of the Bugojno Municipality on one side and the 307th Brigade Command and the OG West Command on the other side was one of mutual cooperation. There could be no subordination between them.²⁵²

214. The Presidency of BiH was the only civilian authority that could issue orders to the units and command the Army in the time of war. Despite this, the Wartime Presidency of the Bugojno Municipality, as the local main authority, frequently discussed the military and security situation at their meetings. Members of the military were regularly present at the meetings. The Wartime Presidency deviated significantly from standard procedure and as the body of local government it issued assignments to the military formations in the form of orders and decisions.

215. It is a fact that the Wartime Presidency often discussed the military situation in the territory of the Bugojno Municipality and many other issues concerning the work of the military and civilian authorities. Decisions concerning the detainees and the detention camp were among the decisions passed during those meetings. Both lawful and unlawful decisions were made at these meetings. At the meeting held on

²⁵¹ Article 39 of the Decree Law on Defense, 14 May 1992 (Official Gazette of the RBiH, 20 May 1992 issue).

²⁵² O-8/3 (Findings and opinion of the expert witness Fikret Muslimović, February – March 2011).

22 July 1993, Chairman of the Wartime Presidency, Dževad Mlačo, made the following entry in his journal: "Officially we must not have civilian prisoners. Secretly - extremists among the captured soldiers are to be liquidated".²⁵³

216. The detention camp, a "prison" for soldiers and civilians in Bugojno, was established by the Wartime Presidency at the meeting held on 26 July 1993. Meho Sadiković was appointed to the position of the camp warden pursuant to a decision issued by the Wartime Presidency. The decision to select *Iskra* Stadium as the site where the camp would be established, as were many others relating directly to the functioning of the military and civilian authorities in the territory of Bugojno, was taken by the Wartime Presidency. Senad Dautović attended most of these meetings.²⁵⁴

217. Similar issues were discussed at the meeting held on 1 August 1993, which was again attended by the Accused Senad Dautović.²⁵⁵

218. The civilian and military officials in Bugojno failed to protect the vertical system of command from any external influence, or to protect the civilian authorities from any unwanted influence from the military quarters. In this respect local leaders of both civilian authorities and military commanders showed their lack of experience.

219. In every well-organized state important national security concerns lead to the need to promote strict discipline and respect among the military officers, from the lowest to the highest level. This also holds true for the civilian authorities' hierarchy. There needs to be a strict discipline on the part of the civilian authorities in understanding that in any state there can be only one civilian person who can give assignments, issue orders, resolve various issues and decide in the realm of the military. When these principles are respected, the civilian and military officials are left with a wide range of ways and modalities for cooperation.²⁵⁶ Violations of the chain of command lead to chaos, confusion and insecurity.

²⁵³ T-640 (Dževad Mlačo's journal, entry dated 22 July 1993).

²⁵⁴ T-177 (Decision appointing the warden of the temporary detention facility in Bugojno, 28 July 1993); T-181 (Decision on removal of the warden of the temporary detention facility in Bugojno dated 10 September 1993); O-16/I (Decision No. 01-124-86/093 dated 24 August 1993). See generally T-640 (Dževad Mlačo's journal).

²⁵⁵ T-640 (Dževad Mlačo's journal, entry dated 1 August 1993).

²⁵⁶ O-8/3 (Findings and opinion of the expert witness Fikret Muslimović, February-March 2011).

220. As far as the functioning of the civilian and military authorities in the territory of the Bugojno Municipality during the relevant time is concerned, the relations between the military and civilian police were well established. This became evident with the capturing of the HVO members by the RBiH Army. These units were comprised of both military and civilian police.

221. Cooperation between the civilian and military police generally revolved around investigations and crime prevention. Thus, in the investigation following a crime, the military police cooperated directly with the civilian police of the Ministry of the Interior (MUP) when a civilian committed a crime that was within the jurisdiction of district military courts or when a civilian was involved in a criminal activity together with a member of the military. The military police could act independently, however, when a member of the ARBiH committed a crime falling within the jurisdiction of the district military court.²⁵⁷

222. Expert witness, General Fikret Muslimovic noted in his report that, with respect to the detainees and the 1993 establishment of prisons in Bugojno, the “District Prosecutor’s Offices and District Military Courts in Zenica and Travnik had jurisdiction over individuals who participated in armed conflicts, during which they committed criminal offences, regardless of whether they were civilians or military, that is, regardless of which warring party they were members of. The captured HVO members²⁵⁸ (if they committed war crimes or other criminal offences falling under the competence of military courts) should have stood trials before the relevant district military courts, and until they were handed over to the judiciary”.

223. Civilian police units were not under the command of the ARBiH, but the Ministry of the Interior. However, on several occasions civilian police units were resubordinated to the military police in special assignments. The relationship between the “two police forces” mainly involved cooperation in the area of police management.

²⁵⁷ Established fact 890. See *Gasal et al.*, Decision of 25 February 2011 to admit the established facts *ex officio* (in Section XII Part A, Procedural Decision No. 2).

²⁵⁸ The Panel notes that the term “captured HVO members” was used by the expert witness in his Finding and Opinion, February-March 2011.

224. No actual hierarchy existed between the military and civilian police. The relationship between them was that of partners mutually ensuring respect for the law and implementation of the law. It could happen, however, that the civilian police were re-subordinated to the military police for specific missions when the military police lacked sufficient manpower. For example, following an order from the 3rd Corps Command dated 18 June 1993, MUP units were resubordinated to the 306th Brigade to carry out joint patrols and set up check-points with military police units subordinated to the 306th Brigade in order to prevent plundering and arson.²⁵⁹

225. There were other examples of resubordination. Units assigned to the prison facility for civilian criminals and captured members of the HVO established in Bugojno were resubordinated from the civilian police. There was a general resubordination of the civilian police to military forces, and a resubordination as part of the establishment of the so-called *Joint Staff of the Army of the RBiH in the Bugojno municipality*. The *Joint Staff* was created in response to the local conflict. The composition of this entity was improvised and directly in contravention of the principles that should have formed the basis for cooperation between the civilian authorities, the RBiH Army Command and the civilian police; the principle of a single authority with subordination in the RBiH Army.²⁶⁰

226. Despite the assertion of the Expert Witness Mile Matijević that there was no evidence that a “unified command” existed, the Panel found based on exhibit T-514 that this command did exist. In the signature section of this document the word “commanders” was inserted. It is also clear that the document was signed by the Accused Senad Dautović as one of these commanders, who issued a clear and precise order concerning the status of the captured persons.

227. The “prison” founded and initially run under civilian authority was taken over by the military on 11 September 1993. From that point on until the 19 March 1994 exchange of the prisoners it was under the control of the military.

²⁵⁹ Established fact 887. See *Gasal et al.*, Decision of 25 February 2011 to admit the established facts *ex officio* (in Section XII Part A, Procedural Decision No. 2).

²⁶⁰ O-8/3 (Findings and opinion of the expert witness Fikret Muslimović, February-March 2011).

VII. CRIMES: FACTUAL FINDINGS

A. THE KILLING OF ALLEGED EXTREMISTS

1. General Factual Findings

(a) [I]n the joint criminal enterprise of the Bugojno Municipality Wartime Presidency headed by Dževad Mlaćo, the purpose of which was to single out persons believed to be extremists among the detained persons of Croat ethnicity and kill them. [...] In the period from 22 July 1993, Senad Dautović as one of the commanders of the Unified Command of the Army of the Republic of Bosnia and Herzegovina Bugojno - Command of the Bugojno town, which was established contrary to the rules of military organization in the Army of RBiH, and which consisted of the 307th Brigade of the Army of RBiH, SJB Bugojno /Bugojno Public Security Station/ and the Bugojno Defense Staff until 27 July 1993, during which time he was also the Chief of SJB Bugojno, by the nature of which position he was a member of the Bugojno Municipality Wartime Presidency until 13 November 1993, and from this period onwards in his capacity as the Assistant Commander for Security in the “OG West”, consciously and willingly participated in the joint criminal enterprise of the Bugojno Municipality Wartime Presidency headed by Dževad Mlaćo

228. Having reviewed all the evidence adduced during the first instance proceedings, the Panel concludes that the Prosecution has established beyond a reasonable doubt the existence of the joint criminal enterprise of the Bugojno Municipality Wartime Presidency headed at the time by Dževad Mlaćo, the purpose of which was to single out persons believed to be extremists among the detained persons of Croat ethnicity and kill them.

229. The Panel finds in the period from 22 July 1993, Senad Dautović as one of the commanders of the Unified Command of the Army of the Republic of Bosnia and Herzegovina Bugojno - Command of the Bugojno town, which was established contrary to the rules of military organization in the Army of RBiH, and which consisted of the 307th Brigade of the Army of RBiH, SJB Bugojno /Bugojno Public Security Station/ and the Bugojno Defense Staff until 27 July 1993, during which time he was also the Chief of SJB Bugojno, by the nature of which position he was a member of the Bugojno Municipality Wartime Presidency until 13 November 1993, and from this

period onwards in his capacity as the Assistant Commander for Security in the “OG West”, consciously and willingly participated in the joint criminal enterprise of the Bugojno Municipality Wartime Presidency headed by Dževad Mlaćo.

230. Expert witness Fikret Muslimović explained how the Unified Command came into being in the Bugojno area, and its existence was also confirmed by witness Selmo Cikotić. According to the testimony of witness Selmo Cikotić, the establishment of the Unified Command was contrary to the rules in the Army of BiH. The Panel has explained above the establishment and operation of the Unified Command.

231. It is evident from exhibit T-514 that the Order was signed by Senad Dautović as one of the commanders, which confirms that Senad Dautović was one of the commanders of the Unified Command. In addition, witness Selmo Cikotić confirmed that Senad Dautović was one of the members of the Unified Command. In light of the evidence adduced at the main trial, the Panel changed the Indictment in this respect. In the opinion of the Panel this change was not to the detriment of the Accused. The Panel concluded that the Accused Dautović was one of the commanders of the Unified Command, as opposed to the sole Commander of the Unified Command. This is a mitigating factor for the Accused Dautović.

232. Based on the testimony of witness Dževad Mlaćo and exhibit T-640 (his journal) the Trial Panel concludes that the Accused was a member of the Wartime Presidency.²⁶¹ In the course of his testimony, Dževad Mlaćo confirmed that the Accused Dautović was a member of the Wartime Presidency. Further, it is evident from exhibit T-640 that Dautović attended most sessions of the Wartime Presidency and that if he was absent from the session, a note was made of his absence. In the course of the evidentiary proceedings, the Defense did not dispute the fact that he was a member of the Wartime Presidency.

233. In exhibit T-600 it was noted that Senad Dautović held the position of the Chief of SBJ Bugojno from 20 March 1993 until 13 November 1993.²⁶² Defense for the Accused Dautović did not dispute the fact that he was the Chief of SJB Bugojno

²⁶¹ See generally T-640 (Dževad Mlaćo's journal).

²⁶² T-600 (Personal file of Senad Dautović).

during this period. The Defense argued, however, that Senad Dautović stayed in this position until 7 December 1993. In support of their contention, the Defense relied on exhibit T-585.²⁶³ The Defense further claimed that Senad Dautović assumed the position of Assistant Commander for Security on 7 December 1993. The Indictment alleges that Senad Dautović held the position of the Chief of SJB Bugono until approximately mid-November.

234. In this respect, the Panel changed the factual description of the Indictment by specifying that Senad Dautović held the position of the Assistant Commander for Security as of 13 November 1993. This change is not to the detriment of the Accused. It is evident from exhibit T-600 that Senad Dautović held the position of the Chief of SJB Bugojno from 20 March until 13 November 1993 and that he moved to the position of the Assistant Commander for Security in the OG "West" on 13 November 1993.²⁶⁴ Furthermore, it is evident from exhibit O-10/1 that an Order was signed by Senad Dautović on 30 November 1993 as the Chief of the Security Service, which indicates that Dautović was in the Operations Group "West", that is, its Security Organ, during this time.²⁶⁵

235. Based on the above, the Panel concludes that Senad Dautović assumed the position of the Assistant Commander for Security in the OG "West" on 13 November 1993.

236. Dževad Mlaćo indicated that the Bugojno Municipality Wartime Presidency was formed after the Croatian and Serb delegates left the Bugojno Municipal Assembly. Then the Bosniak delegates, in accordance with the Statute of Bugojno Municipality, appointed the Bugojno Municipality Presidency and Dževad Mlaćo as its president. In view of the fact that all these events occurred in the time of war, the word 'Wartime' was added to the Bugojno Wartime Municipality Presidency. The main task of the Bugojno Municipality Wartime Presidency was to secure, as much as possible, the survival of the population and provide for the functioning of health institutions, schools and economy in the time of war. Bugojno Municipality

²⁶³ T-585 (Record on the handover of documentation to the Security Organ of OG "West" dated 7 December 1993).

²⁶⁴ T-600 (Personal file of Senad Dautović).

²⁶⁵ O-10/1 (Order of OG "West" dated 30 November 1993).

Presidency was formed to carry out the tasks of the Municipal Assembly during the period when it could not meet or perform its duties. The representatives of military authorities had one or two representatives who practically regularly attended the sessions of the Bugojno Municipality Wartime Presidency.²⁶⁶

237. According to the evidence, Dževad Mlaćo,²⁶⁷ a teacher by occupation, was the president of Bugojno Municipality Wartime Presidency, while other permanent members or those who occasionally attended the sessions of Bugojno Municipality Wartime Presidency included: Senad Dautović (Chief of Bugojno SJB),²⁶⁸ Zeir Mlivo (President of Bugojno Municipality Executive Board),²⁶⁹ Mesud Duvnjak (who was, prior to the formation of Bugojno Municipality Wartime Presidency, according to the witnesses' testimonies, a public prosecutor in Bugojno Municipality)²⁷⁰ Selmo Cikotić, (Commander of OG Zapad),²⁷¹ Ismet Duvnjak (security officer within the OG Zapad),²⁷² Tahir Granić (Commander of 307th ARBiH Motorized Brigade),²⁷³ Abdulah Jeleč (Commander of Bugojno Municipality Defense Staff),²⁷⁴ Redžep Dolovac (Commander of Logistics Base of the 307th ARBiH),²⁷⁵ Ismet Hadžibegović²⁷⁶ and Sead Hadžiabdić.²⁷⁷

238. The sessions of Bugojno Municipality Wartime Presidency were also attended by a minutes-taker who kept the minutes from the sessions.²⁷⁸ The case record contains the following excerpts from the minutes from the Wartime Presidency

²⁶⁶ Dževad Mlaćo (24 March 2010).

²⁶⁷ Dževad Mlaćo (24 March 2010).

²⁶⁸ Dževad Mlaćo (24 March 2010); Enes Handžić (1 June 2011).

²⁶⁹ Dževad Mlaćo (24 March 2010).

²⁷⁰ Enes Handžić (28 June 2011).

²⁷¹ Selmo Cikotić (21 April 2010).

²⁷² Merdžad Đugum (26 May 2010); Nermin Aliefendić (12 May 2010); Enes Handžić (1 June 2011).

²⁷³ Enes Handžić (1 June 2011).

²⁷⁴ Abdulah Jeleč (10 November 2010); T-495 (regular combat report of Bugojno Municipality Defense Staff no. 02/263-82 dated 28 July 1993).

²⁷⁵ O-9/3 (Excerpt from the minutes from the 16th special session of the Wartime Presidency dated 26 July 1993); O-10/3 (Excerpt from the minutes from the 17th special session of the Wartime Presidency dated 28 July 1993); O-12/3 (Excerpt from the minutes from the 19th special session of the Wartime Presidency dated 10 August 1993); Haris Haznadarević (7 July 2010).

²⁷⁶ See e.g. O-9/3 (Excerpt from the minutes from the 16th special session of the Wartime Presidency dated 26 July 1993); O-10/3 (Excerpt from the minutes from the 17th special session of the Wartime Presidency dated 28 July 1993); O-12/3 (Excerpt from the minutes from the 19th special session of the Wartime Presidency dated 10 August 1993).

²⁷⁷ See e.g. O-9/3 (Excerpt from the minutes from the 16th special session of the Wartime Presidency dated 26 July 1993); O-10/3 (Excerpt from the minutes from the 17th special session of the Wartime Presidency dated 28 July 1993); O-12/3 (Excerpt from the minutes from the 19th special session of the Wartime Presidency dated 10 August 1993) and others.

sessions, more specifically from the 59th, 60th, 80th, 84th, 86th as well as from the 87th, 16th, 17th, 18th, 19th and 20th special sessions of the Wartime Presidency.²⁷⁹ Dževad Mlačo's journal, in which he kept notes from these and other sessions of the Bugojno Municipality Wartime Presidency, was also admitted as evidence in the case record.²⁸⁰ Dževad Mlačo's journal was admitted as evidence under number T-640 during Dževad Mlačo's examination as a witness in this case.

239. Dževad Mlačo confirmed the authenticity of this exhibit and clearly emphasized that it was his handwriting in his journal from the material period. He identified the handwriting as his during his testimony before the Panel.²⁸¹ The journal was seized from Dževad Mlačo during the search of his house which was part of the investigation conducted against him before the BiH Prosecutor's Office.²⁸²

240. In the view of this Panel, the key evidence of the existence of the joint criminal enterprise of the Bugojno Municipality Wartime Presidency, the purpose of which was to single out persons believed to be extremists among the detained persons of Croat ethnicity and kill them, is the journal of Dževad Mlačo,²⁸³ the Chairman of the Bugojno Municipality Wartime Presidency.²⁸⁴

241. Dževad Mlačo made notes in his journal between 29 January 1991 and 15 September 1993, a period of time that covers the armed conflict between the ARBiH and HVO in the Bugojno municipality.

²⁷⁸ Dževad Mlačo (24 March 2010).

²⁷⁹ O-9/3 (Excerpt from the minutes from the 16th special session of the Wartime Presidency dated 26 July 1993); O-10/3 (Excerpt from the minutes from the 17th special session of the Wartime Presidency dated 28 July 1993); O-11/3 (Excerpt from the minutes from the 18th special session of the Wartime Presidency dated 29 July 1993), O-12/3 (Excerpt from the minutes from the 19th special session of the Wartime Presidency dated 10 August 1993); T-180 (Excerpt from the minutes from the 21st special session of the Wartime Presidency dated 9 September 1993); O-13/3 (Excerpt from the minutes from the 84th session of the Wartime Presidency dated 17 August 1993); O-14/3 (Excerpt from the minutes from the 80th session of the Wartime Presidency dated 1 August 1993); O-15/3 (Excerpt from the minutes from the 86th session of the Wartime Presidency dated 25 August 1993); O-16/3 (Excerpt from the minutes from the 87th session of the Wartime Presidency dated 8 September 1993); O-0326/4 (Excerpt from the minutes from the 59th session of the Wartime Presidency dated 30 April 1993); O-327/4 (Excerpt from the minutes from the 60th session of the Wartime Presidency dated 7 May 1993).

²⁸⁰ T-640 (Dževad Mlačo's journal).

²⁸¹ Dževad Mlačo (24 March 2010).

²⁸² Dževad Mlačo (24 March 2010); Dževad Mlačo (3 March 2010).

²⁸³ T-640 (Dževad Mlačo's journal).

²⁸⁴ Dževad Mlačo (24 March 2010).

242. Among other things, Dževad Mlaćo recorded agendas and conclusions from regular and extraordinary sessions of the Bugojno Municipality Wartime Presidency. According to Dževad Mlaćo's notes, the 15th Extraordinary Session of the Bugojno Municipality Wartime Presidency was held on 22 July 1993, and the following persons attended: Dževad Mlaćo, Uzeir Mlivo, Mesud (a.k.a. Meša Duvnjak), Abdulah Jeleč, Senad Dautović and Ismet Duvnjak.²⁸⁵ The military situation in Bugojno was discussed at this session and priority tasks were determined. One of the conclusions reached at this session was as follows: "For reasons of expedience, future decisions are to be made without convening a special session, provided that the members of the Wartime Presidency have been contacted and their consent obtained (assigned to the Chairman)".²⁸⁶

243. In addition, Dževad Mlaćo's notes from this session clearly read as follows: "Officially we must not have civilian prisoners. Secretly - extremists among the captured soldiers are to be liquidated".²⁸⁷

244. This particular note clearly and unambiguously indicates that in addition to official issues discussed and entered into the records at the sessions of the Wartime Presidency, other issues and tasks were discussed that, due to their unlawful nature, were left out of the records. The purpose of the joint criminal enterprise - namely to liquidate extremists among the captured persons of Croat ethnicity (which, according to the established state of facts, was accomplished) - was clearly defined at this session of the Wartime Presidency.

245. Based on the position which Senad Dautović held during the relevant period of time, it is clear that he was a member of the Bugojno Municipality Wartime Presidency.²⁸⁸ Decisions of the Bugojno Municipality Wartime Presidency were made with the prior consent of its members.²⁸⁹

246. Based on Dževad Mlaćo's journal, the Panel established that Senad Dautović attended the 15th extraordinary Session of the Bugojno Municipality Wartime

²⁸⁵ T-640 (Dževad Mlaćo's journal, entry dated 22 July 1993).

²⁸⁶ T-640 (Dževad Mlaćo's journal, entry dated 22 July 1993).

²⁸⁷ T-640 (Dževad Mlaćo's journal, entry dated 22 July 1993).

²⁸⁸ Article 39 of the Decree Law on Defense dated 14 May 1992 (Official Gazette of RBiH dated 20 May 1992).

Presidency, i.e. the session in which the decision on the liquidation of the alleged extremists of Croat ethnicity was reached.²⁹⁰ Based on Dževad Mlaćo's notes the Panel finds that the decision on the liquidation of these persons was made with the consent of the members of the Bugojno Municipality Wartime Presidency who were present, including Senad Dautović. Although Tahir Ganić was not present at this meeting, the evidence indicates that he joined in the joint criminal enterprise. It is important to note that no member of the Presidency who was present or otherwise involved objected to or in any way opposed this decision. Furthermore there is no evidence that Dautović ever took any actions counter to this decision. In fact, no evidence was presented to the effect that any member opposed or took any action to prevent the execution of the plan. According to the established state of facts, Senad Dautović consistently carried out other Wartime Presidency's decisions, with a particular focus on the task assigned to him, specifically the implementation of the decision to take blood from the detained persons of Croat ethnicity. This is dealt with in greater detail in the sections below.

247. According to the evidence from the case-file, the Bugojno Municipality Wartime Presidency did not have the names of persons of Croat ethnicity believed to be extremists at the time of this decision. As such, it was necessary to establish criteria to select persons among the Croat detainees who were believed to be extremists. The Panel infers that this was done by the Wartime Presidency but, regardless of who actually established the criteria, Enes Handžić testified that he received the order to select the persons believed to be extremists from the list of detainees.²⁹¹ Enes Handžić, Nermin Aliefendić,²⁹² Merdžad Đugum,²⁹³ Ismet Duvnjak, Muharem Agić and another lawyer interrogated these detainees.²⁹⁴ Handžić explained the criteria used for selection thusly: “if they were commanders of their units; if, during the conflict, they stuck out by, I don't know, engaging in combat action, causing some damage, murdering or abusing someone [...]”.²⁹⁵

²⁸⁹ T-640 (Dževad Mlaćo's journal, entry dated 22 July 1993).

²⁹⁰ T-640 (Dževad Mlaćo's journal, entry dated 22 July 1993).

²⁹¹ Enes Handžić (1 June 2011).

²⁹² Nermin Aliefendić (12 May 2010).

²⁹³ Merdžad Đugum (26 May 2010).

²⁹⁴ Enes Handžić (1 June 2011).

²⁹⁵ Enes Handžić (1 June 2011).

248. Enes Handžić testified that the issue of persons believed to be extremists was discussed on 29 July 1993. Enes Handžić was called to a meeting held in MUP Bugojno. The meeting was attended by Senad Dautović, Ismet Duvnjak, Mesud Meša Duvnjak and Besim Hodžić. At that meeting they discussed the selection of detainees. It was on this occasion that they selected a group of around 100 “extremist” detainees. They then went to the Armed Forces Staff to submit a final list of detainees to the relevant command, where they continued the discussion about detainees. It was agreed that the State Security Service should file reports on war crimes committed by these extremists. In this manner, out of the total number of 400-500 detainees, around 100 “extremists” were selected in this initial screening process.²⁹⁶

249. Enes Handžić did not receive orders or assignments directly from the Bugojno Municipality Wartime Presidency, but through his commander Tahir Granić. Granić often attended the meetings of the Wartime Presidency.²⁹⁷ Granić gave him assignments, which Handžić then carried out. These assignments were not issued in writing, but Enes Handžić noted them in his journal and carried them out.²⁹⁸

250. The evidence shows that, at least two sessions of the Bugojno Municipality Wartime Presidency were preoccupied with the urgent need to screen detained persons of Croat ethnicity and submit to the Wartime Presidency a list of “extremists”. Accordingly, the Panel finds that Enes Handžić, acting on orders from Granić, screened the detainees and selected the “extremists” from among them, and that he acted together with other persons referred to in paragraph 247 to implement this decision of the Bugojno Municipality Wartime Presidency.

251. The 10 August 1993 Record of the 19th Extraordinary Session of the Bugojno Municipality Wartime Presidency held on 9 August 1993, which was attended by Senad Dautović, reads in part:

The Unified Command of the Army of RBiH Bugojno requests from the military security organs to complete the screening of prisoners as urgently as possible and to compose the list of extremists among the detainees to be sent to KDP

²⁹⁶ Enes Handžić (1 June 2011), (28 June 2011).

²⁹⁷ See *generally* T-640 (Dževad Mlaćo’s journal).

²⁹⁸ Witness Enes Handžić (1 June 2011).

Zenica, with a special request that prior to sending them to Zenica the list be submitted to the Wartime Presidency.²⁹⁹

252. At this session, Mesud Duvnjak pointed out the problems that could arise if these decisions of the Wartime Presidency, as well as the joint orders of the Wartime Presidency and the Unified Command of the Army of RBiH, were not implemented. He placed special emphasis on the issue of the “failure to carry out the decision on the singling out of prisoners”.³⁰⁰ The record of this session indicates that all those present agreed that decisions of the Wartime Presidency must be executed.

253. One of the conclusions of the 84th Regular Session of the Bugojno Municipality held on 12 and 14 August 1993 (attended by Senad Dautović and others) was that:

once again it is requested that prior to their sending to the KP Dom Zenica, the list of prisoners be submitted to the Wartime Presidency so that the Wartime Presidency can take a position on it.³⁰¹

254. It was not the responsibility of the Wartime Presidency to screen detainees or determine their status. Despite this, the Bugojno Municipality Wartime Presidency insisted that a list of alleged extremists be drawn up and that it be kept informed (for the purpose of taking a “position” on their status) prior to the relevant bodies taking any action.³⁰²

255. The Panel established beyond any reasonable doubt that there was an attempt on 17 August 1993 to have the detained persons of Croat ethnicity transferred to KPZ (Penal and correctional institution) Zenica, where they were to face further screening and possible prosecution. Enes Handžić testified that this was his idea.³⁰³ Regardless of who initiated the transfer of these persons to Zenica, this transfer never took place; the convoy was prevented from leaving Bugojno.

256. For the purpose of resolving this criminal matter, the Panel reviewed the reasons why the attempt to have these persons transferred to Zenica failed. Three

²⁹⁹ O-12/3 (Excerpt from the minutes of the 19th special session of the Bugojno Municipality Wartime Presidency dated 10 August 1993).

³⁰⁰ O-12/3 (Excerpt from the minutes of the 19th special session of the Bugojno Municipality Wartime Presidency dated 10 August 1993).

³⁰¹ O-13/3 (Excerpt from the minutes of the 84th regular session of the Bugojno Municipality Wartime Presidency dated 17 August 1993).

³⁰² O-8/3 (Finding and opinion of expert Fikret Muslimović); Dževad Mlaćo (24 March 2011).

³⁰³ Enes Handžić (1 June 2011).

different versions of events were presented as to why the detainees were never transferred. In the first version the vehicle that was to be used to transport the detainees broke down.³⁰⁴ The second version was that the road from Bugojno to Zenica was closed due to combat operations, and it was decided that detainees would not be transported to Zenica out of concern for their safety.³⁰⁵ In the third version Mehmed Sadiković, the warden of the camp at the *Iskra* stadium, prevented the transfer, having been ordered by the Chairman of the Bugojno Municipality Wartime Presidency, Dževad Mlaćo to do so.³⁰⁶

257. The first theory, that the vehicle that was to be used for the transport of these detainees to Zenica broke, is not credible in the view of this Panel. Nermin Aliefendić, a direct eyewitness of these events and the person responsible for the transport and handover of detainees to the Penal and correctional institution in Zenica, testified that several trucks were secured for this purpose. At no time during his testimony did he mention a malfunction of any of these vehicles as the reason for the failed attempt to transfer these detainees. He stated that the warden of the camp at the *Iskra* stadium, Mehmed Sadiković, opposed this idea.³⁰⁷ Moreover, it clearly follows from the testimony of other witnesses that several trucks had been secured for the purpose of transporting the detainees; a malfunction of one of the vehicles would surely not have prevented the transfer of at least a portion of detainees.³⁰⁸

258. The Panel finds that the second theory is also not supported by the adduced evidence. The Chairman of the Wartime Presidency, Dževad Mlaćo, was in Zenica at the time of the attempt to have these persons transferred there.³⁰⁹ Also, on 30 July 1993 Enes Handžić made a note in his journal of a trip, undertaken with Tahir Granić, with prisoners to Zenica. The SJB Bugojno daily bulletin stated that three persons were taken to the investigative prison in Zenica on the suspicion that they had committed rape.³¹⁰ Therefore, safe transfer of the detained persons of Croat ethnicity from Bugojno to Zenica was possible at the relevant time, which is

³⁰⁴ T-628 (Notification of the Command of OG West no. 04/582-93 dated 17 August 1993).

³⁰⁵ Selmo Cikotić (21 April 2010); Enes Handžić (1 June 2011).

³⁰⁶ Enes Handžić (1 June 2011); Nermin Aliefendić (12 May 2010).

³⁰⁷ Nermin Aliefendić (12 May 2010).

³⁰⁸ See e.g. Enes Handžić (1 June 2011); Witness Ivan Faletar (3 March 2010); Ivo Kujundžić (16 April 2008); Merdžad Đugum (26 May 2010).

³⁰⁹ Enes Handžić (1 June 2011).

³¹⁰ T-573 (Daily bulletin of SJB Bugojno dated 9 August 1993).

supported by the fact that trucks and staff were actually secured for that purpose on 17 August 1993. Despite a suggestion to the contrary by the ICTY Trial Chamber in *Hadžihasanović*,³¹¹ the Panel is satisfied based on the above that the road was passable and sufficiently safe for the transport of detainees at the relevant time.

259. After reviewing the evidence, the Panel concludes that the real reason behind the failed attempt to have these persons transferred to Zenica was, in fact, opposition by Dževad Mlaćo, President of the Bugojno Municipality Wartime Presidency. Enes Handžić testified that on the day when these persons were scheduled to be transferred, Meša Duvnjak told him that Dževad Mlaćo had forbidden the transfer of these persons to Zenica.³¹² Nermin Aliefendić testified that at the time of the attempt to transfer these persons to the Penal and correctional institution in Zenica, Mehmed Sadiković also told him that he had received an order from his “superior” to prevent the transfer of detainees to Zenica.³¹³ Enes Handžić stated that Nermin Aliefendić, who was responsible for the implementation of this plan, had told him that Mehmed Sadiković prevented the transfer of these persons. He stated that Sadiković did not heed anyone's commands except for the commands coming from the Wartime Presidency.³¹⁴ The Panel notes that Mehmed Sadiković was appointed to the post of a warden of the camp at the *Iskra* stadium by the Wartime Presidency³¹⁵ and relieved of his duty by the decision of the same body on 10 September 1993.³¹⁶

260. Dževad Mlaćo testified that the Wartime Presidency lacked the authority to prosecute detainees, could not make any such decisions, and did not make any decisions in that regard.³¹⁷ The Panel did not consider Mlaćo a credible witness. The Panel has already presented its views with respect to the relation of the Bugojno Municipality Wartime Presidency to the detained persons of Croat ethnicity (paragraphs 251 – 254). Keeping those in mind, the Panel will only briefly refer here to the conclusions adopted at the 19th Extraordinary Session of the Wartime

³¹¹ *Hadžihasanović* Trial Judgment, para. 1733.

³¹² Enes Handžić (1 June 2011).

³¹³ Nermin Aliefendić (12 May 2010).

³¹⁴ Enes Handžić (1 June 2011).

³¹⁵ T-177 (Decision of the Bugojno Municipality Wartime Presidency, number 01-V-22/93 dated 28 July 1993).

³¹⁶ T-181 (Decision of the Bugojno Municipality Wartime Presidency, number 01-140.21/93 dated 10 September 1993).

³¹⁷ Dževad Mlaćo (24 March 2010).

Presidency, where the Unified Command of the Army of RBiH Bugojno requested that the military security bodies complete the screening of detained persons as urgently as possible, and submit the list to the Wartime Presidency prior to sending them to KP Dom in Zenica so that the Wartime Presidency could take a “position” on it. Moreover, Meša Duvnjak pointed out at this session the problem of a failure to execute decisions of the Wartime Presidency as well as joint orders of the Wartime Presidency and the Unified Command of the Army of RBiH, placing particular emphasis on “the failure to carry out the decision on the singling out of prisoners”. Based on the above, the Panel concludes that the Wartime Presidency made decisions with respect to the detained persons of Croat ethnicity. The Panel thus finds that the statements made by Dževad Mlaćo in this regard are not credible.

261. On 18 August 1993 a meeting was convened in the MUP building to discuss the issue of the failed attempt to have these persons transferred to Zenica. The meeting was attended by Senad Dautović, Enes Handžić, Meša Duvnjak, Tahir Granić, Dževad Mlaćo and Nermin Aliefendić. It was reported at this meeting that that the detainees had not been transferred to Zenica out of concern for their safety, but no detailed explanation was given as to how exactly the safety of these persons would have been at risk. On this occasion it was agreed “[...] to wait for a new situation, and perhaps to reduce the number of persons to be transferred over there to Zenica”.³¹⁸

262. The Panel concludes that the reason why the President of the Wartime Presidency did not permit the persons to be transferred to Zenica on 17 August 1993 to face screening and possible prosecution may be found in the agreement reached at the 15th Extraordinary Session of the Bugojno Municipality Wartime Presidency (held on 22 July 1993). The conclusion of this meeting determined there would be no trial, no rule of law but that vigilante justice would prevail. The Wartime Presidency decided to simply liquidate the persons of Croat ethnicity believed to be extremists. The insistence of the Bugojno Municipality Wartime Presidency on the submission of the list of prisoners prior to their transfer to KPD Zenica supports this conclusion, in particular the excerpt from the record of the 84th Session of the Wartime Presidency wherein it was stated that “prior to their sending to the KP Dom Zenica, the list of

prisoners [is to] be submitted to the Wartime Presidency, so that the Wartime Presidency can take a position on it".³¹⁹

263. It is clear that the Bugojno Municipality Wartime Presidency, of which Senad Dautović was an equal member, had already taken a position with respect to the fate of these persons and that the final realization of their plan was soon to follow. In order to implement this plan, the Panel finds a necessary member of the JCE was Tahir Ganić. Ganić was the link between the Wartime Presidency and the use of the military in this plan.

264. It is important to emphasize that as early as 1992 two military courts had already been established in the central Bosnia and were operational throughout the war, which primarily tried unlawful offences committed by members of the ARBiH: Zenica District Military Court and Travnik District Military Court. Zenica District Military Court was established under the Decree Law on District Military Courts which was passed by the Presidency of the RBiH. Travnik District Military Court was established under the Decree Law Amending the Decree Law on Establishment and Operation of the District dated 7 October 1992. The District Military Prosecutor's Offices in Travnik and Zenica were set up under the same principle as the one pertaining to the organization of district military courts. These courts were operational throughout the war and ceased their operation in 1996. Similarly, district military prosecutor's offices were dissolved somewhat earlier the same year.³²⁰

265. District military courts were primarily established to try military persons for the criminal offences they committed. Besides that primary function, they could also try civilians in the service with the ARBiH for the criminal offences they committed during the discharge of their duties; for complicity in criminal offences committed by members of ARBiH, as well as civilians who were not in the service with ARBiH but committed criminal offences stipulated in Article 7 of the Decree Law on District Military Courts. Cases involving civilians that were adjudicated by district military courts usually concerned a failure to respond to the mobilization call-up. However,

³¹⁸ Enes Handžić (1 June 2011).

³¹⁹ O-13/3 (Excerpt from the minutes of the 84th regular session of the Bugojno Municipality Wartime Presidency dated 17 August 1993).

³²⁰ *Gasal et al.*, Decision of 25 February 2011 to admit the established facts *ex officio* (in Section XII Part A, Procedural Decision No. 2).

the number of the cases tried by these courts in which civilians were convicted was insignificant. It should also be noted that these district military courts also had jurisdiction to try HVO members and all prisoners of war.³²¹

266. After the failed attempt to transfer these persons to Zenica, some of the detainees were interrogated again, after which time the original group of 100 was reduced to a group of 26. They were the hardcore “extremists”.³²²

267. In exhibit T-515 (Interim report of the OG West Command signed by Selmo Cikotić which was sent to the ARBiH 3rd Corps Command), Selmo Cikotić reported in detail to the 3rd Corps Command about the imprisoned HVO members. It was also stated in the exhibit that on 19 September 1993 there were 319 imprisoned HVO members in Bugojno for whom there were grounds for trial, while 23 prisoners had a special treatment due to the severity of the offences committed.³²³ Although this exhibit derogates from the testimony of Enes Handžić in respect of the number of the hardcore “extremist” prisoners, it is clearly the same group of people.

268. Enes Handžić received a direct assignment from the Chairman of the Bugojno Municipality Wartime Presidency that he and his Security Service should suggest the location where a group of 26 “most extremist” persons of Croat ethnicity could be safely accommodated, pending their exchange or potential prosecution. Tahir Granić knew this because he attended almost all the sessions and was privy to agreements of the Bugojno Municipality Wartime Presidency.³²⁴ Enes Handžić was Tahir Granić’s superior.

269. It was Dževad Mlaćo who found the location. He told Enes Handžić that he had found an adequate facility for the detainees and that it just needed to be prepared for their accommodation. It was only later that Enes Handžić found out that the “most extremist persons” would be transferred to the motel which was located in the area of Rostovo. Shortly afterwards Dževad Mlaćo communicated to Enes Handžić that persons from the list should be taken to that location. Enes Handžić

³²¹ *Gasal et al.*, Decision of 25 February 2011 to admit the established facts *ex officio* (in Section XII Part A, Procedural Decision No. 2).

³²² Enes Handžić (1 June 2011).

³²³ T-515 (Irregular report of OG West Command dated 19 September 1993).

³²⁴ Enes Handžić (1 June 2011); T-640 (Dževad Mlaćo’s journal).

agreed and sent the names of detainees to the Prison Administration for transfer. The Military Police Commander Nihad Šabić would be responsible for completing this assignment.³²⁵ Although Dževad Mlaćo disputed the statements made by this witness,³²⁶ the Panel accepted the testimony of witness Enes Handžić as truthful and accurate, inasmuch as it is logical and consistent with the other evidence. The journal which Enes Handžić kept during the relevant period of time also supports his testimony.

270. Enes Handžić's journal contains a note for the date 8 September 1993 that reads "single out 6-7 extremists and detain them in a separate room", and a note for 24 September 1993 that reads "remove the extremists".³²⁷ In his testimony, Nermin Aliefendić stated that Enes Handžić said on one occasion that some prisoners, members of the HVO leadership, should be moved to a safe location. This witness did not know whether this was Enes Handžić's or someone else's idea.³²⁸ However, the facts indicate that persons were taken to the BH Bank in Bugojno by members of the military police of the 307th Motorized Brigade of the Army of RBiH, and that some of them were subsequently taken to Rostovo, after which all trace of them was lost. These facts are consistent with the evidence the Panel will discuss further in paragraphs 281 – 316.

271. Senad Dautović did not participate in the transfer of the detainees to the BiH Bank or to Rostovo. But according to Enes Handžić he was present during the compiling of the list of the group of 26 persons.³²⁹

272. Enes Handžić stated that Dževad Mlaćo's right hand man was the Military Police Commander, Nihad Šabić. Nihad Šabić received an assignment to take the list of prisoners to Enes Handžić. Handžić would put his signature on it, and then Enes Handžić would order Nihad Šabić to execute it. Then the military police would

³²⁵ Enes Handžić (1 June 2011).

³²⁶ Dževad Mlaćo (24 March 2010).

³²⁷ T-642 (Enes Handžić's journal, entry dated 24 September 1993).

³²⁸ Nermin Aliefendić (12 May 2010).

³²⁹ Enes Handžić (1 June 2011).

go to the warden with the list, remove the detainees and take them to the BH Bank.³³⁰
From the Bank they were taken in the direction of Rostovo and disappeared.³³¹

273. The Commander of the Military Police Platoon of the 307th Motorized Brigade, Hidajet Vinčević described how the military police orders were implemented. He stated that he received orders from Nihad Šabić, the commander of the unit/company, to bring individuals in for interrogation, which he then passed on to the patrol (one or two members of the military police), who then executed these orders. Eventually, a note would be written on the order indicating that it had been executed.

274. Additionally, the fact that the list of 26 extremists was the result of the Wartime Presidency's Decision clearly follows from the fact that Enes Handžić had the obligation to report to the Wartime Presidency on this group, which he did whenever it was requested of him. The Panel notes the following testimony.

Prosecutor: Did you have the obligation to inform the Wartime Presidency?

Witness: Yes. Because those persons were on the list of 26.

Prosecutor: One thing remains unclear to me. You said that you informed Mr. Granić, the Wartime Presidency. Did you attend the meeting of the Wartime Presidency when you reported about the death of Perica Kovačević and Nikica Miloš a.k.a. Kardelj?

Witness: As far as I remember, I did not attend any official meeting of the Wartime Presidency.

Prosecutor: How did you then inform the Wartime Presidency...

Witness: Well...

Prosecutor: ...because the number of extremists from the list was reduced now?

Witness: Well, I would be invited to a room or someone would come and call me. I would then report on the realization, that is, activity from the list.³³²

275. After considering the above in combination with the established state of facts concerning the disappearance and killing of persons of Croat ethnicity (paragraphs 281 - 316), the Panel considers it established beyond any reasonable

³³⁰ Hamid Đopa (13 January 2010); Suvad Delić (13 January 2010).

³³¹ Enes Handžić (1 June 2011).

³³² Enes Handžić (1 June 2011).

doubt that the Wartime Presidency persisted in their 22 July 1993 plan to liquidate “extremists among the captured soldiers”.

276. In response to the Prosecutor's question about the fate of these persons, Enes Handžić answered:

Witness: As far as I remember, only one of them is still alive, Željko Miloš.

Prosecutor: Željko Miloš. What about others from the list of 26 ‘most extremist persons’?

Witness: As far as I know, three or four men were killed and it is known who killed them. As for the others, their fate is not known to me, but it is assumed that they were killed.³³³

(b) whereby Senad Dautović, as a member of the joint criminal enterprise, significantly contributed by his acts and failure to act to the execution of the common plan to commit the criminal offense of murder

277. The Panel finds that Senad Dautović, as a member of the joint criminal enterprise, significantly contributed by his acts and failure to act, to the execution of the common plan to commit the criminal offense of murder.

278. As a member of the Wartime Presidency, it is clear that by participating in the making of the decision to liquidate persons of Croat ethnicity alleged to be extremists Senad Dautović made a significant contribution to the execution of the common purpose of the joint criminal enterprise of the Bugojno Municipality Wartime Presidency.

279. It is clear that, although he took no part in the killings themselves, he intended for the crime to occur. He remained silent when the plan was put forward. As a chief of police he had an obligation to protect all persons living in Bugnojo. He took no action to prevent the plan from succeeding nor did he report the plan to his superiors. His silence at the time proves his intent.

280. Likewise his failure to act also demonstrates his intention of participating in the common plan. He was present when the plan was devised and approved by the

³³³ Enes Handžić (1 June 2011).

group. He was either present or informed of the subsequent decisions of the Wartime presidency implementing this decision. He was present when the list of the “most extremist” was drawn up. He made no efforts to change or foil the plan. Indeed, by failing to act on his duty to protect and prevent illegal actions he made a significant contribution to the joint criminal enterprise of the Wartime Presidency.

(c) whereupon persons of Croat ethnicity Niko Džaja, Mihovil Strujić, Jadranko Gvozden, Željko Miloš, Frano Jezidžić and Stipica Zelić were taken from forced labor in Prusac to the BH Bank in Bugojno, where the Military Police of the 307th Brigade of the Army of RBiH was stationed and where they were abused by members of the military police who punched and kicked them and beat them with blunt objects all over their bodies, as a result of which Jadranko Gvozden succumbed to the injuries sustained during the abuse at the BH Bank, after which time they were taken in an unknown direction whence all trace of them has been lost, except for Željko Miloš who managed to escape

281. The Panel has found that the Prosecution has established that persons of Croat ethnicity, namely Niko Džaja, Mihovil Strujić, Jadranko Gvozden, Željko Miloš, Frano Jezidžić and Stipica Zelić were taken from Prusac where they performed labor to the BH Bank in Bugojno, where the Military Police of the 307th Brigade of the Army of RBiH was stationed and where they were abused by members of the military police who punched and kicked them and beat them with blunt objects all over their bodies, as a result of which Jadranko Gvozden succumbed to the injuries sustained during the abuse at the BH Bank, after which time they were taken in an unknown direction whence all trace of them has been lost, except for Željko Miloš who managed to escape. The above finding of the Court is corroborated by a great deal of documentary and testimonial evidence.

282. First of all, having considered exhibit O-13/1 (Approval of the Security Organ of the 307th Brigade Command) addressed to the Prison Warden for the use of 30 detainees for physical labor, in combination with the testimony of witnesses Željko Miloš,³³⁴ Željko Lozić,³³⁵ Zoran Pocrnja,³³⁶ Dražen Vučak,³³⁷ Nikica Marković,³³⁸

³³⁴ Željko Miloš (7 May 2008).

³³⁵ Željko Lozić (6 May 2009).

³³⁶ Zoran Pocrnja (20 August 2008).

³³⁷ Dražen Vučak (9 July 2008).

Ivan Faletar³³⁹ and others, the Panel established that a group of detainees, including Niko Džaja, Mihovil Strujić, Jadranko Gvozden, Željko Miloš, Frano Jezidžić and Stipica Zelić, performed labor in Prusac as of 20 August 1993.³⁴⁰ They stayed at this location until approximately mid-October 1993.³⁴¹ In the course of the first instance proceedings, the Defense did not dispute the fact that the above-mentioned persons performed labor in Prusac.

283. The Panel relied primarily on the testimony of witness Željko Miloš, a direct eyewitness of the events in question, in making the finding that the detainees were taken “two by two” from the location of Prusac to the BH Bank on various occasions, after which time all trace of them is lost. This witness stated that after they spent a while doing labor at Prusac, detainees were taken away in pairs to the BH Bank in the following order: Stipica Zelić and Frano Jezidžić, Mihovil Strujić and Niko Džaja, and finally Jadranko Gvozden and the witness himself.³⁴² The witness further stated that Enes Sijamija,³⁴³ Deputy Commander of the Military Police of the 307th Motorized Brigade, and Dudo Duvnjak,³⁴⁴ a member of the same brigade, took him and Jadranko Gvozden from Prusac to the BH Bank in Bugojno where the Military Police of the 307th Motorized Brigade was stationed at the time.³⁴⁵ This is corroborated by exhibit T-183 (Order of the Security Organ of the 307th Motorized Brigade Command) which ordered the military police to bring Jadranko Gvozden and Željko Miloš³⁴⁶ from Prusac for interrogation at the BH Bank, as well as exhibit T-610 (Warrant of the Security Organ of the 307th Motorized Brigade Command), which requested that the military police commander apprehend Niko Džaja and Mićo Strujić and transport them to the premises of the military police.³⁴⁷

³³⁸ Nikica Marković (16 April 2008).

³³⁹ Ivan Faletar (3 March 2010).

³⁴⁰ O-13/1 (Approval of the Command of the 307th Motorized Brigade, Security Organ number: 307-13-728/93 dated 20 August 1993).

³⁴¹ Ivan Faletar (3 March 2010).

³⁴² Željko Miloš (7 May 2008).

³⁴³ Enes Handžić (1 June 2011).

³⁴⁴ Ivan Kapetanović (19 March 1993).

³⁴⁵ See e.g. Nisvet Gasal (3 March 2010); Nermin Aliefendić (12 May 2010); Hidajet Vinčević (5 May 2010).

³⁴⁶ T-183 (Order of the Command of the 307th Motorized Brigade, Security Organ number 307-13-992/93 dated 4 October 1993).

³⁴⁷ T-.610 (Warrant of the Command of the 307th Motorized Brigade, Security Organ number 307-13-969/93 dated 29 September 1993).

284. Some evidence is contradictory. It would seem to follow from exhibit T-183 (Order of the Security Organ of the 307th Motorized Brigade Command) that the apprehension of Stipica Zelić from Prusac was ordered on 4 October 1993.³⁴⁸ However, the Panel gave credence to the live testimony of Željko Miloš, who stated that Stipica Zelić was taken earlier. This testimony was consistent with the accounts of other witnesses who testified in relation to these circumstances. When testifying in relation to these circumstances, which will be dealt with in more detail below, other witnesses were explicit that the Croat detainees were taken from Prusac on separate occasions and in groups of two. Moreover, their accounts were consistent with respect to the fact that Stipica Zelić was among the first Croat detainees to be taken away from Prusac, after which he disappeared.

285. Željko Miloš further testified that they were detained in the BH Bank for a couple of days and that during their detention there, he and Jadranko Gvozden were beaten on several occasions by persons unknown to him.³⁴⁹ According to the testimony of this witness, Jadranko Gvozden lost consciousness as a result of injuries sustained during the beating, but the witness was not sure whether these injuries resulted in Jadranko Gvozden's death.³⁵⁰ However, the Panel considered the testimony of this witness in combination with the testimony of witness Enes Handžić, who stated that during the relevant period of time, by virtue of his capacity as the Assistant Commander for Security in the 307th Motorized Brigade (and upon whose order the aggrieved parties Jadranko Gvozden and Željko Miloš were brought to the BH Bank)³⁵¹, he knew that Jadranko Gvozden had succumbed to injuries sustained during the beating at the BH Bank.³⁵² In light of the conformity and consistency between these witnesses, the Panel considers it established that Jadranko Gvozden succumbed to the injuries sustained during the beating at the BH Bank in Bugojno during the relevant period of time.

³⁴⁸ T-183 (Order of the Command of the 307th Motorized Brigade, Security Organ number 307-13-992/93 dated 4 October 1993).

³⁴⁹ Željko Miloš (7 May 2008).

³⁵⁰ Željko Miloš (7 May 2008).

³⁵¹ T-183 (Order of the Command of the 307th Brigade, Security Organ number 307-13-992/93 dated 4 October 1993).

³⁵² Enes Handžić (1 June 2011).

286. In his testimony, Željko Miloš further stated that Niko and Ivo Miloš were brought to the BH Bank during his detention there, and that after being detained there for a couple of days Nihad Šabić (Commander of the Military Police of the 307th Motorized Brigade)³⁵³ and another guard transported the three of them in the “Mercedes” car in the direction of Rostovo. Upon arriving in Rostovo they were removed from the car and set off on foot. The witness then hit the guard and ran away.³⁵⁴ This witness's averment is supported by the testimony of witness Enes Handžić, who stated that on 28 September 1993 he and Nihad Šabić escorted three detainees in the direction of Rostovo, one of whom managed to escape.³⁵⁵ Nermin Aliefendić also testified that during the relevant time he had knowledge that while being escorted to Rostovo by Nihad Šabić, detainee Željko Miloš managed to escape. Enes Handžić confirmed this fact to him and expressed his dissatisfaction with the escape.³⁵⁶

287. There is some inconsistency between the testimony of witness Enes Handžić and other adduced evidence with respect to the time when these persons were alleged to have been taken to Rostovo. However, by following the chronology of the events based on the adduced evidence the Panel was able to establish that the removal of these persons to Rostovo occurred in early October, and not in late September 1993 as Enes Handžić claimed. The Panel bases its conclusion on exhibit T-183 (Order to apprehend Jadranko Gvozden and Željko Miloš and bring them to the premises of the Military Police of the 307th Motorized Brigade dated 4 October 1993),³⁵⁷ as well as exhibits T-475 (Official Note of the Military Police of the 307th Motorized Brigade dated 5 October 1993) and T-476 (Official Note of the Military Police of the 307th Motorized Brigade dated 5 October 1993) which describe respectively the interrogations of Nikica Miloš and Ivo Miloš.³⁵⁸ These documents clearly indicate that the transfer of these persons to Rostovo happened in early October 1993.

³⁵³ Enes Handžić (1 June 2011).

³⁵⁴ Željko Miloš (7 May 2008).

³⁵⁵ Enes Handžić (28 June 2011).

³⁵⁶ Nermin Aliefendić (12 May 2010).

³⁵⁷ T-183 (Order of the Command of the 307th Motorized Brigade, Security Organ number 307-13-992/93 dated 4 October 1993).

³⁵⁸ T-475 (Official Note of the Military Police of the 307th Motorized Brigade on the interrogation of Nikica Miloš dated 5 October 1993); T-476 (Official Note of the Military Police of the 307th Motorized Brigade on the interrogation of Ivo Miloš dated 5 October 1993).

288. The Panel examined the veracity of the statements made by witness Željko Miloš in relation to the removal of detainees from Prusac, where they performed labor, to the BH Bank in Bugojno by comparing his testimony with the testimony of the other witnesses who were in Prusac at the time. These witnesses corroborated his testimony. His testimony was also corroborated by the adduced documentary evidence. Exhibit O-13/1 is the approval of the Security Organ of the 307th Motorized Brigade Command addressed to the Prison Warden for the use of 30 detainees for physical labor.³⁵⁹ On the back of this order is a handwritten list of names of persons who were selected for this labor. Witnesses Zoran Pocrnja,³⁶⁰ Željko Lozić,³⁶¹ Dražen Vučak,³⁶² Nikica Marković³⁶³ and Ivan Faletar³⁶⁴ confirmed that they were selected and sent to labor in Prusac. With this evidence the Prosecution established beyond any reasonable doubt that these witnesses performed labor in Prusac during the relevant period of time. Witness Miroslav Marjanović also performed labor at this location, but was transferred from this location after seven days.³⁶⁵ As a result he had no knowledge of these events. Although they did not perform labor at this particular location, witnesses Drago Žulj³⁶⁶ and Kazimir Kaić³⁶⁷ testified about their knowledge of these events in the course of their examination before this Panel.

289. Witness Željko Lozić testified that with the help of his friend Huso Sušić, a member of the Army of RBiH, he had himself transferred from the camp at the *Iskra* stadium to Prusac.³⁶⁸ At the *Iskra* stadium, where he was detained, he felt unsafe and was in fear for his life. As a precaution his friend arranged for him to be taken to Prusac at this time. In the evening hours after work he found some other Croat detainees who had been previously sent there. During his detention in Prusac, he saw detainees taken away in groups of two. He saw Mićo Strujić and Jezidžić taken away by members of the military police, and later the former chief of MUP (Ministry of

³⁵⁹ O-13/1 (Approval of the Command of the 307th Motorized Brigade, Security Organ number: 307-13-728/93 dated 20 August 1993).

³⁶⁰ Zoran Pocrnja (20 August 2008).

³⁶¹ Željko Lozić (6 May 2009).

³⁶² Dražen Vučak (9 July 2008).

³⁶³ Nikica Marković (16 April 2008).

³⁶⁴ Ivan Faletar (3 March 2010).

³⁶⁵ Miroslav Marjanović (9 July 2008).

³⁶⁶ Drago Žulj (27 February 2008).

³⁶⁷ Kazimir Kaić (18 June 2008).

Interior) in Bugojno and another detainee were taken. These were followed by Željko Miloš. He remembered him well because when the name “Željko” was called out, the witness thought that they intended to take him away on that occasion, given that they had the same name.³⁶⁹

290. Witness Ivan Faletar was among those detainees engaged in labor in Prusac.³⁷⁰ He also confirmed the removal of these persons from Prusac. He testified that Dudo would come to Prusac in the black “Mercedes” car taking the detainees in twos, first Stipica Zelić and Mihovil Strujić, then Frano Jezidžić and Željko Miloš, and finally Jadranko Gvozden and another detainee.³⁷¹ Witness Zoran Pocrnja also confirmed the removal of Stipica Zelić, Niko Džaja, Jadranko Gvozden and Frano Jezidžić from Prusac.³⁷² Witness Nikica Marković testified that Stipica Zelić, Frano Jezidžić, Mihovil Strujić, Niko Džaja and Jadranko Gvozden never returned once they were taken from Prusac.³⁷³ Witness Dražen Vučak, another detainee who performed labor in Prusac during this time, testified that Niko Džaja, Mihovil Strujić and Frano Jezidžić never returned from Prusac to the camp at the *Iskra* stadium.³⁷⁴

291. Witnesses Drago Žulj and Kazimir Kaić, among others, testified they heard stories consistent with these facts. They had heard that these persons disappeared after being taken to perform labor in Prusac. Witness Drago Žulj testified that Stipica Zelić and Jadranko Gvozden never returned from Prusac to the camp at the *Iskra* stadium,³⁷⁵ while witness Kazimir Kaić testified that Niko Džaja, Frano Jezidžić, Mihovil Strujić and Jadranko Gvozden were taken from Prusac, after which time all trace of them was lost.³⁷⁶

292. In support of the above, exhibit O-13/1 contains on its reverse side a handwritten list of names, with the names of those who were not returned from Prusac to the camp at the *Iskra* stadium underlined in the following order: Jadranko

³⁶⁸ Željko Lozić (6 May 2009).

³⁶⁹ Željko Lozić (6 May 2009).

³⁷⁰ Ivan Faletar (3 March 2010).

³⁷¹ Ivan Faletar (3 March 2010).

³⁷² Zoran Pocrnja (20 August 2008).

³⁷³ Nikica Marković (16 April 2008).

³⁷⁴ Dražen Vučak (9 July 2008).

³⁷⁵ Drago Žulj (27 February 2008).

³⁷⁶ Kazimir Kaić (8 April 2009).

Gvozden, Mihovil Strujić, Niko Džaja, Željko Miloš, Stipica Zelić and Frano Jezdičić.³⁷⁷ In addition, there are handwritten notes on the back of this document that reads: “23 - returned” and “6 - not returned”. The order was addressed to the prison warden but it is not clear who wrote the note.

293. Although there are certain inconsistencies between the testimony of witnesses Željko Miloš, Željko Lozić and Ivan Faletar as to when and who was taken with whom from Prusac to the BH Bank in Bugojno, the Panel finds that their testimony is reliable to the extent that all of them agree that these persons were taken by members of the Military Police of the 307th Motorized Brigade to the BH Bank in Bugojno and then never seen again. This witness evidence is also consistent with the documentary evidence, particularly T-183,³⁷⁸ T-610³⁷⁹ and O-13/1.

294. Based on the testimony by Muhamed Đonlić, the Panel finds that the Defense witness for Enes Handžić who stated that all detainees who performed labor in Prusac returned to the camp at the *Iskra* stadium lacks credibility. The Panel concludes that this testimony was made for the purpose of helping the Accused evade responsibility.

(d) whereas Miroslav Dilber, Ante Markulj, Dragan Erkapić, Dragan Miličević, Ivo Miloš, Perica Kovačević, Zoro Galić, Zdravko Juričić, Niko Zlatunić, Nikica (son of Dragutin) Miloš, Perica Crnjak and Branko Crnjak, who were taken to the BH Bank from the *Iskra* camp never returned to the camp

295. The Panel finds that Miroslav Dilber, Ante Markulj, Dragan Erkapić, Dragan Miličević, Ivo Miloš, Perica Kovačević, Zoro Galić, Zdravko Juričić, Niko Zlatunić, Nikica (son of Dragutin) Miloš, Perica Crnjak and Branko Crnjak, who were taken to the BH Bank from the *Iskra* camp never returned to the camp.

296. The Panel considers that the Prosecution has proved beyond a reasonable doubt that Miroslav Dilber, Ante Markulj, Dragan Erkapić, Dragan Miličević, Ivo Miloš,

³⁷⁷ O-13/1 (Approval of the Command of the 307th Motorized Brigade, Security Organ number: 307-13-728/93 dated 20 August 1993).

³⁷⁸ T-183 (Order of the Command of the 307th Motorized Brigade, Security Organ number 307-13-992/93 dated 4 October 1993).

Perica Kovačević, Zoro Galić, Zdravko Juričić, Niko Zlatunić, Nikica Miloš (son of Dragutin), Perica Crnjak and Branko Crnjak were taken from the camp at the *Iskra* stadium to the BH Bank and never returned to the camp, which follows from the testimonial and documentary evidence.

297. It follows from the testimony of witness Miroslav Zelić that Miroslav Dilber, Dragan Erkapić and Ante Markulj were called out from the camp at the *Iskra* stadium and taken away by members of the Brigade Police, after which time all trace of them was lost. Zelic stated that Musajb Kukavica came together with two members of the Brigade Police to the room in the camp at the *Iskra* stadium and called his name, as well as the names of Miroslav Dilber, Dragan Erkapić and Ante Markulj. Someone said the he was injured and could not go out. Then two members of the Brigade Police came inside (they wore black vests) and Kukavica came with them. The witness was unable to move and they did not take him out due to his poor health. They needed, however, to get permission from someone over a Motorola in order to leave him there. According to this witness's testimony the other three were taken away and all trace of them was subsequently lost. This witness also testified that Musajb Kukavica, whom he knew from before, told him on that occasion that they were going to the BH Bank for interrogation.³⁸⁰

298. In addition to the above, the removal of Miroslav Dilber from the camp at the *Iskra* stadium is confirmed by witness Berislav Džalto, who stated that Miroslav Dilber, after he had returned to the camp at the *Iskra* stadium from Prusac where he had performed labor, was taken away and he has remained unaccounted ever since.³⁸¹ Witness Marko Gunjača also corroborated this during his testimony before the Panel. He stated that Miroslav Dilber was taken away from the camp at the *Iskra* stadium and that he never returned.³⁸² Witness B, stated that he was brought from the Gymnasium to the camp at the *Iskra* stadium in early October, and that he was detained in the same room together with Miroslav Dilber and Dragan Erkapić. He

³⁷⁹ T-610 (Warrant of the Command of the 307th Motorized Brigade, Security Organ number 307-13-969/93 dated 29 September 1993).

³⁸⁰ Miroslav Zelić (20 February 2008).

³⁸¹ Berislav Džalto (25 June 2008).

³⁸² Marko Gunjača (20 February 2008).

also confirmed that Miroslav Dilber was taken from the camp at the *Iskra* stadium to the BH Bank in Bugojno, from whence he never returned.³⁸³

299. Witness Božo Križanac, who was taken from the camp at the *Iskra* stadium to the BH Bank in Bugojno, testified that he found Ante Markulj in the basement upon his arrival, and that Ante had already been detained there and his fate remains unknown since then.³⁸⁴ Exhibit O-6/1 (order by the Security Service of OG “West” dated 13 November 1993) addressed to the Prison Administration on the release of detainees, confirms that Božo Križanac was indeed taken to the BH Bank in Bugojno during the relevant period of time. Witness Božo Križanac also stated that around 13 November Kukavica came and read out five names from a list, and explained that they were being released. They were taken out of the stadium by the military police and ARBiH men to the BiH Bank. He and two others were released immediately. The Deputy Commander of the Military police allowed him to leave. The remaining two had to make a statement and from there they disappeared. Testifying in relation to the circumstances of the taking away and disappearance of Croat detainees from the camp at the *Iskra* stadium, witness Berislav Džalto stated that he saw some detainees from the camp at the *Iskra* stadium taken away. He noted that on the list of missing persons was also the name of Ante Markulj, who was not exchanged on 19 March 1994 with the other detainees.³⁸⁵

300. Several witnesses testified in relation to the circumstances surrounding the removal of Dragan Erkapić from the camp at the *Iskra* stadium to the BH Bank in Bugojno and his subsequent disappearance. Miroslav Zelić, Josip Kalajica, Marko Gunjača, Drago Žulj and Rade Marjanović testified in relation to these circumstances. Each of these witnesses gave their insight in relation to these events to the Panel through their testimony. In the part of his testimony concerning the taking away of detainees from the camp at the *Iskra* stadium and their disappearance, witness Josip Kalajica stated that he believed Dragan Erkapić was taken away from the camp at the *Iskra* stadium on 13 November 1993 and has not been seen since.³⁸⁶ In his testimony, which is consistent with the testimony of other witnesses, witness Marko

³⁸³ Witness B (26 November 2008).

³⁸⁴ Božo Križanac (25 February 2009).

³⁸⁵ Berislav Džalto (25 June 2008).

³⁸⁶ Josip Kalajica (15 October 2008).

Gunjača also stated that Dragan Erkapić was removed from the camp at the *Iskra* stadium and has been unaccounted for ever since.³⁸⁷ Further corroboration comes from witness Drago Žulj, who stated that Dragan Erkapić was taken from the camp at the *Iskra* stadium, after which all trace of him has been lost. He learned by speaking with other detainees that persons were taken from the *Iskra* stadium and brought to the BH Bank.³⁸⁸ The Panel's finding is also confirmed by witness Rade Marjanović who, when testifying in relation to the circumstances surrounding the disappearance of Dragan Erkapić, stated that he believed that Kukavica came to the rooms at the *Iskra* stadium and read from a list that Dragan Erkapić and Dragan Miličević were going home. This witness believed that this had occurred in November or December 1993. He further stated that since then all trace of them has been lost and that they are still registered as missing persons.³⁸⁹ In light of the above, the Panel considers that it has been established that Dragan Erkapić was removed from the camp at the *Iskra* stadium and taken to the BH Bank in Bugojno by members of the military police, after which time all trace of him is lost.

301. The fact that Dragan Miličević and Zoran Galić were taken from the camp at the *Iskra* stadium to the BH Bank in Bugojno is confirmed by exhibit O-6/1 (Order of the Security Service of OG "West" dated 13 November 1993), which is addressed to the Prison Administration and relates to the release of detainees Zvonko Džaja, Božo Križanac and Vlado Subašić and the taking of Dragan Miličević and Zoran Galić for interrogation.³⁹⁰ This order was complied with as explained by the live testimony of Božo Križanac. Križanac was a direct eyewitness of these events. He testified that he was among the five persons whose names were called out by Musajb Kukavica at the *Iskra* stadium camp. Musajb Kukavica explained that Dragan Miličević and Zoran Galić were going to be interrogated, while he and the others would be released. This witness further testified that they were taken to the BH Bank by members of the military police and that on 13 November 1993 the witness was released along with the other two detainees. Dragan Miličević and Zoran Galić remained behind and have since disappeared.³⁹¹ The removal of these persons from

³⁸⁷ Marko Gunjača (20 August 2008).

³⁸⁸ Drago Žulj (27 February 2008).

³⁸⁹ Rade Marjanović (11 March 2009).

³⁹⁰ O-6/1 (Order of OG "West", Security Service number 307-13-1231/93 dated 13 November 1993).

³⁹¹ Witness Božo Križanac (25 February 2009).

the camp at the *Iskra* stadium by members of the military police and their subsequent disappearance is also confirmed by witnesses Slaven Brajković and Ivica Klarić.³⁹² Witness Berislav Jezidžić testified that he also witnessed Dragan Miličević being taken away from the camp at the *Iskra* stadium.³⁹³ Witness Rade Marjanović confirmed these events in his testimony. Marjanović believes that it happened in November or December 1993.³⁹⁴ Finally, consistent with the above testimony, witness Zdenko Ivoš stated that on one occasion during his detention at the camp at the *Iskra* stadium, members of the military police came, called Dragan Miličević's name, and took him in the direction of the BH Bank, subsequent to which he was never seen again.³⁹⁵

302. The fact that Ivo Miloš was taken from the camp at the *Iskra* stadium to the BH Bank is confirmed by the testimony of many witnesses, as well as the documentary evidence. First of all, mindful of the fact that Ivo Miloš was taken to the BH Bank in Bugojno on several occasions, the Panel finds it necessary to refer to exhibit O-15/1 (Request of the Security Organ of the 307th Motorized Brigade Command), which was addressed to the Prison Warden and asked for Ivo Miloš and Nikica Miloš to be released from custody and brought to the Brigade's Security Organ so they could be interrogated.³⁹⁶ The Panel notes the handwritten note on this request referring to these persons and that reads: "Returned to prison". The return of the prisoners is corroborated by witness D, who stated that the first time Ivo Miloš was removed from the camp at the *Iskra* stadium, he returned beaten up. Witness D also testified that Ivo Miloš was registered by the International Committee of the Red Cross (ICRC) on the occasion of their visit to the camp at the *Iskra* stadium.³⁹⁷ This was also corroborated by the testimony of witness Ivan Kapetanović.³⁹⁸ The ICRC visited the camp at the *Iskra* stadium on 28 September 1993.³⁹⁹ Based on the above, the Panel established beyond any reasonable doubt that Ivo Miloš, after he was taken to the BH Bank on 24 August 1993 request of the 307th Motorized Brigade Command, was

³⁹² Slaven Brajković (3 September 2008); Ivica Klarić (27 February 2008).

³⁹³ Berislav Jezidžić (21 January 2009).

³⁹⁴ Rade Marjanović (11 March 2009).

³⁹⁵ Zdenko Ivoš (10 February 2010).

³⁹⁶ O-15/1 (Request of the Command of the 307th Motorized Brigade, Security Organ number 307-13-754/93 dated 24 August 1993).

³⁹⁷ Witness D (21 January 2009).

³⁹⁸ Ivan Kapetanović (19 March 2008).

³⁹⁹ T-20 (ICRC Certificate dated 28 September 1993 issued to the name of Ivan Kapetanović).

returned to the camp at the *Iskra* stadium. Final confirmation of this fact comes from exhibit T-588, a letter the deceased Ivo Miloš sent to his parents on 8 September 1993 from the *Iskra* stadium camp.⁴⁰⁰

303. After Ivo Miloš was registered with the ICRC, he was taken again to the BH Bank in Bugojno, after which time he disappeared. The fact that he was taken again to the BH Bank is confirmed by exhibit T-610 (Warrant of the Security Organ of the 307th Motorized Brigade Command), a warrant to bring Niko Džaja, Mićo Strujić and Ivo Miloš to the military police,⁴⁰¹ as well as exhibit T-476 (Official Note of the Military Police of the 307th Motorized Brigade on the interrogation of Ivo Miloš dated 5 October 1993).⁴⁰² Witness Ivan Kapetanović was firm in his testimony that following his registration by the ICRC, Ivo Miloš was taken away from the camp at the *Iskra* stadium and never seen again.⁴⁰³ This is further corroborated by witness D.⁴⁰⁴ In addition to the above, witness Željko Miloš, a direct eyewitness of the events in question, when describing his detention with Jadranko Gvozden at the BH Bank, stated that Ivo and Niko Miloš joined them after a while and that they were crammed by Nihad Šabić into the “Mercedes” and driven off in the direction of Rostovo. This witness further testified that upon arriving in Rostovo and getting out of the car, Željko Miloš hit a guard and ran away. The others were less fortunate. It can be seen from his testimony that Ivo and Niko Miloš stayed behind with members of the Military Police of the 307th Motorized Brigade of the Army of RBiH (paragraph 286). In his testimony, witness Enes Handžić stated that he participated in the escort of three detainees to Rostovo and that one of them managed to escape (paragraph 286). Based on the above, the Panel finds that Ivo Miloš was taken from the camp at the *Iskra* stadium to the BH Bank in late September 1993.

304. Perica Kovačević and Nikica (son of Dragutin) Miloš were also taken from the camp at the *Iskra* stadium to the BH Bank in Bugojno by a similar order. Exhibit O-8/1 is an Approval of the Security Organ of the 307th Motorized Brigade

⁴⁰⁰ T-588 (Ivo Miloš's letter).

⁴⁰¹ T-610 (Warrant of the Command of the 307th Motorized Brigade, Security Organ number 307-13-969/93 dated 29 September 1993).

⁴⁰² T-476 (Official Note of the Military Police of the 307th Motorized Brigade on the interrogation of Ivo Miloš dated 5 October 1993).

⁴⁰³ Ivan Kapetanović (19 March 2008).

⁴⁰⁴ Witness D (21 January 2009).

Command dated 11 October 1993. It is addressed to the Prison Administration and states that Perica Kovačević and Nikica (son of Dragutin) Miloš are to be taken from the from the prison facility.⁴⁰⁵ This fact is also confirmed by witness Enes Handžić, who stated that at the relevant period of time he had knowledge that Perica Kovačević and Nikica Miloš had succumbed to the injuries sustained during the beating in the BH Bank. Handžić testified that he was informed by a member of the military police, Ahmed Hadžić, on 13 October 1993 that Perica Kovačević and Nikica Miloš had died at the BH Bank. He was told that Enis Sijamija had beaten them to death.⁴⁰⁶ Witness Enes Handžić noted this circumstance in his journal, which he kept throughout the relevant period of time, with the following note entered for 13 October 1993 in relation to Perica Kovačević and Nikica Miloš: “died”.⁴⁰⁷

305. After reviewing the testimony of witnesses Stjepan Radoš,⁴⁰⁸ Marko Gunjača,⁴⁰⁹ Josip Kalajica⁴¹⁰ and Berislav Džalto,⁴¹¹ all of whom were detainees, as well as the adduced documentary evidence, the Panel concludes that the Prosecution has established beyond a reasonable doubt that detainees Zdravko Juričić, Niko Zlatunić, Branko Crnjak and Perica Crnjak were taken from the camp at the *Iskra* stadium to the BH Bank in Bugojno by members of the military police.

306. In making this finding, the Panel primarily relied on exhibit O-7/1 (Approval of the Security Organ of the 307th Motorized Brigade Command dated 7 October 1993), which was addressed to the Prison Warden. This exhibit authorized members of the military police to bring Branko Crnjak, Zdravko Juričić and Niko Zlatunić for interrogation.⁴¹² Stjepan Radoš stated that during his detention at the *Iskra* stadium camp he witnessed the taking away of Niko Zlatunić and Zdravko Juričić by members of the military police of the Army of RBiH. He confirmed that they never returned to the camp at the *Iskra* stadium.⁴¹³ In addition, witness Josip Kalajica testified that the

⁴⁰⁵ O-8/1 (Approval of the Command of the 307th Motorized Brigade, Security Organ number 307-13-1021/93 dated 11 October 1993).

⁴⁰⁶ Enes Handžić (1 June 2011).

⁴⁰⁷ T-642 (Enes Handžić's journal, entry dated 13 October 1993).

⁴⁰⁸ Stjepan Radoš (27 August 2008).

⁴⁰⁹ Marko Gunjača (20 February 2008).

⁴¹⁰ Josip Kalajica (15 October 2008).

⁴¹¹ Berislav Đalto (25 June 2008).

⁴¹² O-7/1 (Approval of the Command of the 307th Motorized Brigade, Security Organ number 307-13-1003/93 dated 7 October 1993).

⁴¹³ Stjepan Radoš (27 August 2008).

detainees at the *Iskra* stadium camp were taken away on separate occasions over a rather long period of time, and thereafter never returned to the stadium. This witness confirmed that Niko Zlatunić and Zdravko Juričić were among the detainees taken away, and that they remain on the list of missing persons.⁴¹⁴ In relation to the same set of circumstances witness Marko Gunjača testified that many persons, including Zdravko Juričić and Niko Zlatunić, were removed and never returned to the stadium.⁴¹⁵ Witness Berislav Džalto stated that Niko Zlatunić, Perica Crnjak and Branko Crnjak were taken away from the camp at the *Iskra* stadium. This witness further testified that he learnt about the fact that these persons were taken to the BH Bank from other detainees who had been taken there to do labor and who had seen them there.⁴¹⁶ Based on all the above, the Panel considers that the Prosecution has established beyond any reasonable doubt that the above-mentioned persons were taken from the camp at the *Iskra* stadium to the BH Bank in Bugojno by members of the Military Police of the 307th Motorized Brigade, and subsequently disappeared.

307. The Panel considers it necessary to comment on exhibit T-184, the Order of the Security Organ of the 307th Motorized Brigade Command dated 23 October 1993 addressed to the Military Police and the Prison Administration. In some segments this order contradicts the state of facts established above. The above order, in the section labeled 'Item 1', ordered the Military Police of the 307th Motorized Brigade to bring Željko Spremo from the prison facility to the premises of the military police for interrogation and, in the section labeled 'Item 2', to bring detainees Dragan Erkapić, Perica Crnjak, Mićo Dilber, Zdravko Juričić and Ivo Miličević from Prusac.⁴¹⁷

308. The Panel has already considered the evidence and provided reasons for its inference that the above-mentioned persons were taken to the BH Bank in Bugojno from the camp at the *Iskra* stadium (paragraphs 297 – 306). It clearly follows from the testimony of Miroslav Zelić and witness B (who were brought from the Gymnasium to the camp at the *Iskra* stadium in early October 1993) that Dragan Erkapić and Miroslav Dilber were taken to the BH Bank from the camp at the *Iskra* stadium (paragraphs 297 – 298). This fact is also corroborated by exhibit O-13/1

⁴¹⁴ Josip Kalajica (15 October 2008).

⁴¹⁵ Marko Gunjača (20 February 2008).

⁴¹⁶ Berislav Džalto (25 June 2008).

(Approval of the Security Organ of the 307th Motorized Brigade Command addressed to the Prison Warden for the use of 30 detainees for physical labor). This order has Miroslav Dilber's name handwritten on the back of it, as the person who returned from labor in Prusac to the camp at the *Iskra* stadium.⁴¹⁸ This event, according to the testimony of witness Ivan Faletar, happened in mid-October 1993.⁴¹⁹ In addition to the above, the Panel points draws attention to the testimony of Memnun Mustajbegović who, while testifying about the disappearance of Perica Crnjak, stated that he was taken back to the stadium together with a group of detainees after having performed labor in Duratbegović Dolac. The Panel has elsewhere elaborated on the removal of Zdravko Juričić from the *Iskra* stadium camp by the military police, wherein it gave credence to witness Stjepan Radoš, who was clear in his testimony that Zdravko Juričić and Niko Zlatunić were removed together and, never returned to the camp at the *Iskra* stadium.

309. It is evident that whoever drafted exhibit T-184, at the time of drafting it did not have accurate information about the whereabouts of individual detainees of Croat ethnicity. Based on this, the Panel was cautious in using this evidence, accepting it only in the parts that are consistent with other evidence. Accordingly, the Panel accepted this evidence only insofar as it is consistent with the other adduced evidence that relates to the time when Dragan Erkapić, Miroslav Dilber and Perica Crnjak were removed, but rejects the exhibit with respect to the place from which they were taken away, inasmuch as other evidence shows that these persons were at the *Iskra* stadium camp at the time. In light of exhibit O-7/1 (Approval of the Security Organ of the 307th Motorized Brigade Command issued to members of the military police to bring Branko Crnjak, Zdravko Juričić and Niko Zlatunić in for interrogation),⁴²⁰ and the testimony of witness Stjepan Radoš (paragraph 306), all of which are consistent with and corroborative of each other, the Panel also established that Zdravko Juričić was also taken from the camp at the *Iskra* stadium to the BH Bank on 7 October 1993, as opposed to 23 October 1993, the date suggested by

⁴¹⁷ T-184 (Order of the Command of the 307th Motorized Brigade, Security Organ number 307-13-1104/93 dated 23 October 1993).

⁴¹⁸ O-13/1 (Approval of the Command of the 307th Motorized Brigade, Security Organ number 307-13-728/93 dated 20 August 1993).

⁴¹⁹ Ivan Faletar (3 March 2010).

⁴²⁰ O-7/1 (Approval of the Command of the 307th Motorized Brigade, Security Organ number 307-13-1003/93 dated 7 October 1993).

exhibit T-184 (Order of the Security Organ of the 307th Motorized Brigade Command, number 307-13-1104/93 dated 23 October 1993).⁴²¹

310. Additionally, there are some discrepancies in the accounts of witnesses who testified in relation to these circumstances, related to when and with whom the detainees were taken from the camp at the *Iskra* stadium. In the view of this Panel such small discrepancies are understandable and to be expected in light of the large amount of time that has elapsed between when the events occurred and the time that witnesses were asked to testify about them before the Panel. Ultimately, these discrepancies had no effect on Panel's ability to determine the decisive facts required for resolving this matter, i.e. that the above-mentioned detainees of Croat ethnicity were taken by members of the Military from the camp at the *Iskra* stadium to the BH Bank in Bugojno Police of the 307th Motorized Brigade of the Army of RBiH, subsequent to which all trace of them was lost (paragraph 276, 297 – 306).

(e) while Nikica (son of Jozo) Miloš a.k.a. Kardelj was captured at an unknown location and taken to the BH Bank after which time all trace of him is lost

311. The Panel finds that Nikica Miloš (a.k.a. Kardelj) was captured at an unknown location and taken to the BH Bank after which time all trace of him is lost. Based on the established state of facts, the Panel decided *to clarify* the Indictment of the Prosecutor's Office in this part. In the factual description of the Indictment it is alleged that Nikica Miloš was taken to the BH Bank from the camp at the *Iskra* stadium. Although this fact does not constitute a decisive circumstance which would have an impact on the finding as to the guilt of the Accused Senad Dautović, the Panel opted to adjust the factual description to conform to the evidence to enable a more complete and accurate understanding of the events in question.

312. It is evident that Franjka Miloš, Nikica Miloš' wife, addressed the MUP Bugojno with a petition for the release of her husband.⁴²² It is apparent that the petition was considered, as the Security Service decided to bring him in for further questioning,

⁴²¹ T-184 (Order of the Command of the 307th Motorized Brigade, Security Organ number 307-13-1104/93 dated 23 October 1993).

⁴²² T-171a (Franjka Miloš's petition addressed to MUP Bugojno).

presumably to see if he could be released.⁴²³ The request from the Security Service was addressed to the Prison Warden seeking the release of Ivo Miloš and Nikica Miloš from custody to bring them to the Security Organ for interrogation.⁴²⁴ A medical report issued to the name of Nikica Miloš by the Bugojno Health Center was also issued that day, that is, on 24 August 1993.⁴²⁵ The Official Note of the Security Organ of the 307th Motorized Brigade Command made by the Assistant Commander for Security Enes Handžić that Nikica Miloš⁴²⁶ was indeed released from the prison facility on 27 August 1993. This official note was also delivered to the Prison Warden.⁴²⁷

313. With this evidence in mind, the Panel determined that Nikica Miloš (a.k.a. Kardelj), following his removal to the BH Bank on 24 August 1993, was returned to the camp at the *Iskra* stadium, from which he was released on 27 August 1993. This fact is corroborated by exhibit T-610 (Warrant of the Security Organ of the 307th Motorized Brigade Command dated 29 September 1993, signed by the Assistant Commander for Security Enes Handžić), which *inter alia* ordered the military police commander to “arrest” Nikica Miloš and Stipo Miloš, and bring Niko Đaja, Mićo Strujić and Ivo Miloš to the military police.⁴²⁸ The Panel infers from this evidence that at the time of making this warrant, Nikica Miloš was not in custody, given that the term used in relation to him was “arrest” rather than “bring”, which was, according to other evidence, the term typically applied to persons in custody. Moreover, it can be clearly inferred from the testimony of witnesses Ivo Mršo, Mirko Tomljenović, Kazimir Kaić, Ivica Keškić, Anto Kapetanović and Ivan Faletar that Nikica Miloš was released to the *Iskra* stadium camp after his return from the BH Bank. It was only after he was re-arrested at an unknown location that he was taken back to the BH Bank in Bugojno. Witness Ivo Mršo testified that on one occasion he was in Dževad Mlaćo's office where he met Nikica Miloš's wife and sister-in-law, who told him that Nikica

⁴²³ O-15/1 (Request of the Command of the 307th Motorized Brigade, Security Organ number 307-13-754/93 dated 24 August 1993).

⁴²⁴ O-15/1 (Request of the Command of the 307th Motorized Brigade, Security Organ number 307-13-754/93 dated 24 August 1993).

⁴²⁵ T-171b (Bugojno Health Center's report issued to the name of Nikica Miloš).

⁴²⁶ T-172 (Official Note of the Command of the 307th Motorized Brigade, Security Organ number 307-13-770/93 dated 27 August 1993).

⁴²⁷ O-5/1 (Official Note of the Command of the 307th Motorized Brigade, Security Organ number 307-13-769/93 dated 27 August 1993).

Miloš had been detained, released, and then re-arrested and re-detained at the BH Bank.⁴²⁹ Mirko Tomljenović,⁴³⁰ Kazimir Kaić,⁴³¹ Ivan Keškić,⁴³² Ante Kapetanović⁴³³ and Ivan Faletar⁴³⁴ were categorical in their assertion that Nikica Miloš was set free after he was taken the BH Bank the first time, but that once he was taken away a second time he was never seen again.

314. The fact that Nikica Miloš was detained in the BH Bank during the relevant period of time is also confirmed by witness Željko Miloš, who was present with him in the BH Bank. Željko Miloš stated in his testimony that he was detained for a while in the BH Bank with Niko and Ivo Miloš, and then escorted in the direction of Rostovo by Nihad Šabić. It can be inferred from his testimony that after he escaped, Nikica Miloš and Ivo Miloš stayed behind with members of the Military Police of the 307th Motorized Brigade. They have not been seen since (paragraph 286).

315. Enes Handžić testified that detainees of Croat ethnicity believed to be extremists were taken to the BH Bank by members of the Military Police of the 307th Motorized Brigade, detained there for a while and then taken in the direction of Rostovo, after which all trace of them was lost.⁴³⁵ He also stated that these persons were never brought to the premises of the Security Organ for interrogation, but were instead taken directly to the BH Bank by members of the Military Police of the 307th Motorized Brigade.⁴³⁶ Hidajet Vinčević, Commander of the Military Police Platoon of the 307th Motorized Brigade, testified about the detention of persons in the BH Bank in Bugojno. He stated that two or three members of the HVO who had been brought there for interrogation were detained for a short while in the holding cell in the BH Bank.⁴³⁷ Enes Handžić also testified that on one occasion he, together with Nihad

⁴²⁸ T-610 (Warrant of the Command of the 307th Motorized Brigade, Security Organ number 307-13-969/93 dated 29 September 1993).

⁴²⁹ Ivo Mršo (22 October 2008).

⁴³⁰ Mirko Tomljenović (20 August 2008).

⁴³¹ Kazimir Kaić (8 April 2009).

⁴³² Ivica Keškić (14 May 2008).

⁴³³ Ante Kapetanović (22 October 2008).

⁴³⁴ Ivan Faletar (3 March 2010).

⁴³⁵ Enes Handžić (1 June 2011).

⁴³⁶ Enes Handžić (15 June 2011).

⁴³⁷ Hidajet Vinčević (5 May 2010).

Šabić, visited the detainees of Croat ethnicity believed to be extremists, who were detained in a motel facility in Rostovo.⁴³⁸

316. In view of all the foregoing, the Panel has found that Senad Dautović knowingly and willingly participated in the Joint Criminal Enterprise involving the Bugojno Municipality Wartime Presidency. The purpose and common plan of this JCE which was to single out from the Croat prisoners the persons who were regarded as extremists and kill them. Despite the evidence indicating that the group of “the most extremist persons” included 23 or 26 Croat persons, the Panel established that as a part of this JCE, 17 Croat prisoners were removed from the BH Bank to an unknown location, that one prisoner was killed on the premises of the BH Bank, and that another managed to escape. Based on the presented evidence, the Panel could not determine the fate of other persons whose names were on the list of “the most extremist persons”.

2. Acts of Senad Dautović

317. Although there is no evidence indicating that Senad Dautović actively participated in making the decision to execute the alleged Croat extremists (paragraph 246), he clearly agreed to this outcome by his failure to object. The adoption of the decisions of the Wartime Presidency required approval of the members of the Wartime Presidency (paragraph 243). Consequently, Senad Dautović did not oppose this unlawful decision, which he could and should have done as an equal member of the Wartime Presidency. Therefore, through his silence, he made a contribution to the overall plan.

318. Enes Handžić pointed out that he believed that Dautović had been present when the list of “the most extremist persons” was compiled but did not participate in the final acts of enforcement of the decision, i.e. the bringing of these persons from the camp of the FC *Iskra* stadium to the BH bank and their subsequent taking away in an unknown direction.⁴³⁹

⁴³⁸ Enes Handžić (28 June 2011).

⁴³⁹ Enes Handžić (1 June 2011).

319. Senad Dautović knew what fate these persons were facing. There is no evidence to indicate that he took any action to prevent the enforcement of the decision to execute these persons, to instigate proceedings against or investigate the persons who partook in the execution of this decision. By virtue of his position at the time as the Chief of Bugojno SJB, he should have done something to that effect as he had done in other instances. For example, according to the produced evidence, Senad Dautović filed, practically on a daily basis, criminal reports against the perpetrators of other criminal offences to the higher public prosecutor in Zenica.⁴⁴⁰

320. By failing to act or oppose this decision and take actions to prevent or investigate the perpetrators of this criminal offence, Senad Dautović made a significant contribution to its perpetration which makes him criminally responsible. His silence virtually assured the other participants that their actions would go unpunished. Here it is not what Senad Dautović did, but what he did not do, that controls his liability.

⁴⁴⁰ See e.g. O-161/04 (Criminal report to SJB Bugojno dated 6 August 1993); O-165/4 (Criminal report to SJB Bugojno dated 26 August 1993); O-171/4 (Criminal report to SJB Bugojno dated 21 September 1993); O-172/4 (Criminal report to SJB Bugojno dated 20 September 1993); O-174/4 (Criminal report to SJB Bugojno dated 24 September 1993); O-175/4 (Criminal report to SJB Bugojno dated 24 September 1993); O-176/4 (Criminal report to SJB Bugojno dated 13 September 1993); O-177/4 (Criminal report to SJB Bugojno dated 23 September 1993); O-178/4 (Criminal report to SJB Bugojno dated 23 September 1993).

B. FORCED BLOOD DONATION

1. General Factual Findings (Slavonija Di Furniture Salon)

(a) In the period from 24 July 1993 until approximately mid-August 1993, after the shortage of blood supply was discussed at the sessions of the Bugojno Municipality Wartime Presidency, which were either attended by Senad Dautović or of which he was informed, and after it was decided to secure the needed blood supply, armed members of the Army of RBiH, Bugojno Defense Staff and SJB Bugojno, took out of the basement of the Slavonija Di Furniture Showroom located in the immediate vicinity of the Bugojno SJB the detained persons of Croat ethnicity

321. The Panel finds that in the period from 24 July 1993 until approximately mid-August 1993, after the shortage of blood supply was discussed at the sessions of the Bugojno Municipality Wartime Presidency, which were either attended by Senad Dautović or of which he was informed, and after it was decided to secure the needed blood supply, armed members of the Army of RBiH, Bugojno Defense Staff and SJB Bugojno, took out of the basement of the *Slavonija Di Furniture Showroom* located in the immediate vicinity of the Bugojno SJB the detained persons of Croat ethnicity.

322. The Panel is satisfied that the Prosecution has proved beyond a reasonable doubt that from 24 July 1993 a large number of persons of Croat ethnicity were detained in the basement of the *Slavonija Di Furniture Salon*. It follows from the testimony of witnesses Viktor Maros,⁴⁴¹ Nikica Marković,⁴⁴² Tomislav Turalija,⁴⁴³ Božo Križanac,⁴⁴⁴ Ozren Gvozdenović,⁴⁴⁵ Rade Marijanović,⁴⁴⁶ Damir Kolovrat,⁴⁴⁷ Damir Grgić,⁴⁴⁸ Vlatko Brnas,⁴⁴⁹ Ilija Udovičić,⁴⁵⁰ Zrinko Alvir,⁴⁵¹ Zoran Pocrnja,⁴⁵²

⁴⁴¹ Viktor Maros (17 December 2008).

⁴⁴² Nikica Marković (16 April 2008).

⁴⁴³ Tomislav Turalija (25 February 2009).

⁴⁴⁴ Božo Križanac (25 February 2009).

⁴⁴⁵ Ozren Gvozdenović (10 December 2008).

⁴⁴⁶ Rade Marijanović (11 March 2009).

⁴⁴⁷ Damir Kolovrat (4 March 2009).

⁴⁴⁸ Damir Grgić (4 March 2009).

⁴⁴⁹ Vlatko Brnas (1 October 2008).

Mirko Tomljenović,⁴⁵³ Željko Miloš,⁴⁵⁴ Marko Gunjača,⁴⁵⁵ Drago Žulj,⁴⁵⁶ Ivica Klarić,⁴⁵⁷ Franjo Vejić,⁴⁵⁸ Witness D⁴⁵⁹ and Miroslav Marijanović⁴⁶⁰ that in the seven to fifteen days from 24 July 1993 they were brought to and detained in the *Slavonija Di* Furniture Salon and held there until approximately the middle of August.

323. As described above in paragraphs 215 and 238, the Wartime Presidency held regular and extraordinary sessions to discuss the military and security situation in Bugojno and the surrounding area, as well as issues affecting the civilian population.⁴⁶¹ As a result of these discussions the Wartime Presidency made decisions with regard to events in Bugojno. Dževad Mlaćo was the Chairman of the Wartime Presidency.⁴⁶² Under his leadership and direction the Wartime Presidency made and implemented decisions at its sessions. While not all official records of these meetings have been found, Mlaćo's journal serves as a contemporary recording of minutes and notes of the meetings.

324. At the session of 22 July 1993 the members of the Wartime Presidency agreed as follows: "For reasons of expedience, future decisions are to be made without convening a special session provided that the members of the Wartime Presidency are contacted and their consent obtained (assigned to the Chairman)".⁴⁶³ Although no written records of decisions made outside of the 'special session' framework exist, the actions of the members of the Wartime Presidency indicate that decisions were made pursuant to this 'expedited process'.

325. The journal noted the Wartime Presidency's decision of 25 July 1993 to secure the needed blood supply for the Wartime Hospital. This decision was made utilizing the expedited process. Therefore, the Panel concludes that the Chairman

⁴⁵⁰ Ilija Udovičić (3 September 2008).

⁴⁵¹ Zrinko Alvir (5 September 2008).

⁴⁵² Zoran Pocrnja (20 August 2008).

⁴⁵³ Mirko Tomljenović (20 August 2008).

⁴⁵⁴ Željko Miloš (7 May 2008).

⁴⁵⁵ Marko Gunjača (20 February 2008).

⁴⁵⁶ Drago Žulj (27 February 2008).

⁴⁵⁷ Ivica Klarić (27 February 2008).

⁴⁵⁸ Franjo Vejić (13 February 2008).

⁴⁵⁹ Witness D (21 January 2009).

⁴⁶⁰ Miroslav Marjanović (9 July 2008).

⁴⁶¹ See *generally* T-640 (Dževad Mlaćo's journal).

⁴⁶² Dževad Mlaćo (23 April 2010).

⁴⁶³ T-640 (Dževad Mlaćo's journal, entry dated 22 July 1993).

obtained consent from the members of the Wartime Presidency for this decision. This first decision was an effort to mobilize the civilian population to donate blood. Direction was given to broadcast this request via the local radio station. Apparently this effort was not totally successful. At the session held on 14 August 1993, which Senad Dautović (among others) attended, he was assigned the task of securing the blood supply for the needs of the Bugojno Wartime Hospital by the Wartime Presidency.⁴⁶⁴ It is clear from the language that this effort to secure the blood supply was to be different from the previous volunteer effort. Mlaćo's record of the session refers to the 'mobilization' of blood donors. This was the formulation of a joint criminal enterprise. From the events that followed, the Panel concludes that the mobilization of blood donors referred to persons of Croat ethnicity who were detained. Based on the foregoing, the Panel concludes that Senad Dautović was aware of the decisions of the Wartime Presidency, and that he attended the sessions at which it was decided to secure the blood supply and accepted responsibility for implementing this decision.

326. Witness testimony confirms that one of the methods to secure the blood supply was to take it from the detainees. According to the testimony of witness Marko Gunjača, "most cases of forced blood donation happened at the [Furniture] Salon".⁴⁶⁵ This witness further testified that someone came to the *Slavonija Di* Furniture Salon and sought detainees with blood type A. Anyone with this blood type was required to come forward. Witness Admir Slipac testified that he was a member of the reserve police force. In his testimony, he stated that he spent most of his hours on duty "across the road from the building of the Ministry of Interior [MUP], in the civilian hospital which, at the time, was wartime hospital".⁴⁶⁶

327. Moreover, exhibit T-643 shows that the Wartime Hospital was established by the Decision of the Wartime Presidency dated 15 July 1993.⁴⁶⁷ Pursuant to this Decision, the Wartime Hospital was located in the Bugojno Health Center and the Bugojno MUP was made responsible for its security.

⁴⁶⁴ T-640 (Dževad Mlaćo's Journal, entry dated 14 August 1993).

⁴⁶⁵ Marko Gunjača (20 February 2008).

⁴⁶⁶ Admir Slipac (25 March 2009).

⁴⁶⁷ T-643 (Decision of the Wartime Presidency on the establishment of the Wartime Hospital dated 15 July 1993).

328. The Wartime Hospital was secured and placed under the supervision of Senad Dautović. Admir Slipac testified that on one occasion, upon the instruction of a doctor from the Wartime Hospital, he went to the Furniture Salon to see if there was anyone willing to donate blood. He arrived at the hospital with three Croat men.⁴⁶⁸ The Panel did not give credence to this witness in the part of his testimony where he stated that they were voluntary blood donors, i.e. that they donated blood without any coercion. The Panel specifically holds that, in light of the coercive environment in which detainees find themselves, in a detention situation it is difficult to ascertain if an action is truly voluntary. While some witnesses indicated that they had volunteered to donate blood, and the Court views this as a humanitarian act, this fact is insufficient to relieve a responsible person of criminal liability.

329. Witness Ilija Udovičić confirmed that detainees were taken out of the Furniture Salon to donate blood. He also indicated that requests for blood were based on blood type, and that blood type formed the basis upon which groups of detainees were taken to the Wartime Hospital. He added that the reason that he was not taken to donate blood was because he kept silent about his blood type. This witness also testified that if a detainee did not go to donate blood, he was threatened with a beating.⁴⁶⁹

(b) among them persons to whom Senad Dautović guaranteed their safety and treatment in accordance with the rules of international humanitarian law and who had surrendered to Senad Dautović, and took them to the Bugojno Health Center where the Wartime Hospital was located opposite the Bugojno SJB and for whose security the Bugojno SJB was responsible

330. The Panel finds that among them were persons to whom Senad Dautović guaranteed their safety and treatment in accordance with the rules of international humanitarian law and who had surrendered to Senad Dautović, and took them to the Bugojno Health Center where the Wartime Hospital was located opposite the Bugojno SJB and for whose security the Bugojno SJB was responsible.

⁴⁶⁸ Admir Slipac (25 March 2009).

⁴⁶⁹ Ilija Udovičić (3 September 2008).

331. The Panel is satisfied that the Prosecution has proved beyond a reasonable doubt that persons of Croat ethnicity surrendered to the Accused Senad Dautović, and that he guaranteed their safety.

332. Witnesses Slaven Brajković,⁴⁷⁰ Miroslav Zelić, Josip Ćubela and Ilija Dujmović testified that Stipica Zelić negotiated terms of surrender with Senad Dautović. Miroslav Zelić testified that they concluded that Senad Dautović could protect them.⁴⁷¹ Moreover, it was said that they were called on the megaphone to surrender and that they were guaranteed that “not even a hair will fall from our heads”.⁴⁷²

333. Witness Josip Ćubela testified that they surrendered to Senad Dautović and that they laid down their weapons. In his testimony, Drago Žulj recounted that Stipica Zelić returned from the negotiations and informed them that he had negotiated with Dautović, and that he had been told they would be treated fairly.⁴⁷³ Witnesses Nikica Marković and Željko Miloš also confirmed that they had surrendered to Senad Dautović, whereupon they lay down their weapons.

334. The Panel is satisfied that the Prosecution has proved beyond a reasonable doubt that members of the Army of BiH, Bugojno Defense Staff and SJB Bugojno removed detainees from the Furniture Salon and took them to the Bugojno Health Center, where the Bugojno Wartime Hospital was located. Witness Admir Slipac testifies that, as a member of the SJB Bugojno reserve force he was posted at the entrance to the hospital (the Bugojno Wartime Hospital) where he secured the Health Center entrance.⁴⁷⁴ This witness further testified that the *Slavonija Di* Furniture Salon (where persons of Croat ethnicity were detained) was in the immediate vicinity of the Bugojno Wartime Hospital.

⁴⁷⁰ Slaven Brajković (3 September 2008).

⁴⁷¹ Miroslav Zelić (20 February 2008).

⁴⁷² Miroslav Zelić (20 February 2008).

⁴⁷³ Drago Žulj (27 February 2008).

⁴⁷⁴ Admir Slipac (25 March 2009).

(c) where the nurses drew blood from the unwilling detainees for the needs of the Wartime Hospital thus inflicting serious mental or physical suffering on the detainees whereupon the detainees were taken back to the Furniture Showroom and detained

335. The Panel is satisfied that the Prosecution has proved beyond a reasonable doubt that members of the Army of BiH, Bugojno Defense Staff and SJB Bugojno took detainees to the Wartime Hospital, where nurses drew blood from unwilling detainees for the needs of the Wartime Hospital thus inflicting serious mental or physical suffering on the detainees, whereupon the detainees were taken back to the Furniture Showroom and detained.

336. The Panel has already explained how it was concluded at the session of the Wartime Presidency that a blood supply had to be secured in order to meet the needs of the Wartime Hospital, and that Senad Dautović was to mobilize blood donors (paragraph 325).

337. Witnesses Ilija Udovičić and Marko Gunjača testified that detainees from the Furniture Salon were taken to donate blood at the Health Center where the Wartime Hospital was located. In addition, witness Ilija Udovičić testified that forced blood donation was organized around specific blood types, and groups of detainees were formed and taken to donate blood on that basis. Witnesses also testified that detainees taken to donate blood were subsequently returned and detained at the Furniture Salon.

338. The Panel concludes from the witness testimony that blood donation was involuntary. First, the witnesses were detained. Detention is a coercive environment and there is no way to test for actual consent. Moreover, witness Marko Gunjača specifically testified that blood was forcibly taken from detainees at the Furniture Salon. Based on this witness's testimony and the other evidence discussed above, the Panel concludes that nurses drew blood from detainees against their will.

339. Although blood donation by itself is a harmless medical procedure, it must be done in proper hygienic conditions with some care for the donor. There is no evidence that is what took place. Rather, the manner of selecting detainees, the threat of beatings, the detainee status of the blood donors and the invasive nature of the medical procedure at issue, when considered together, convince the Panel that

the incidents of forced blood donation amount to cruel treatment. The implementation of the forced blood donation program amounts to an intentional act which caused serious mental or physical suffering and constituted a serious attack on human dignity.

2. General Factual Findings (Bugojno SJB)

(a) In the period from 19 July 1993 until 25 August 1993, and after the shortage of blood supply was discussed at the sessions of the Bugojno Municipality Wartime Presidency, which were either attended by Senad Dautović or of which he was informed, and after it was decided to secure the needed blood supply

340. The Panel finds that in the period from 19 July 1993 until 25 August 1993, and after the shortage of blood supply was discussed at the sessions of the Bugojno Municipality Wartime Presidency, which were either attended by Senad Dautović or of which he was informed, and after it was decided to secure the needed blood supply.

341. The Panel is satisfied that the Prosecution has proved beyond a reasonable doubt that during the above indicated period of time, the shortage of blood was discussed at the sessions of the Wartime Presidency, and that at these sessions it was decided to secure the blood supply (as discussed above in paragraph 325). The Panel has changed the beginning of the period in which the detainees were detained in the lock-up cells in SJB Bugojno based on evidence adduced at the main trial.

342. In the preceding paragraphs the Panel explained that Senad Dautović was informed of the decision of the Wartime Presidency to secure blood supply for the needs of the Wartime Hospital and that he attended the session of the Wartime Presidency where he was tasked with mobilizing blood donors.

(b) armed members of the Army of RBiH, Bugojno Defense Staff and SJB Bugojno took out of the basement of the Bugojno SJB the detained persons of Croat ethnicity, including Kazimir Kaić, Zlatko Sušilović, Tomislav Turalija, Ivica Pavlović and other detainees, and took them under escort to the Bugojno Health Center where the Wartime Hospital was located opposite the Bugojno SJB and for whose security Bugojno SJB was responsible, where the nurses drew blood from the unwilling detainees for the needs of the Wartime Hospital thus inflicting serious mental or physical suffering on them whereupon the detainees were taken back to the premises of the Bugojno SJB and detained there

343. The Panel finds that armed members of the Army of RBiH, Bugojno Defense Staff and SJB Bugojno took out of the basement of the Bugojno SJB the detained persons of Croat ethnicity, including Kazimir Kaić, Zlatko Sušilović, Tomislav Turalija, Ivica Pavlović and other detainees, and took them under escort to the Bugojno Health Center where the Wartime Hospital was located opposite the Bugojno SJB and for whose security Bugojno SJB was responsible, where the nurses drew blood from the unwilling detainees for the needs of the Wartime Hospital thus inflicting serious mental or physical suffering on them whereupon the detainees were taken back to the premises of the Bugojno SJB and detained there.

344. The Panel is satisfied that the Prosecution has proved beyond a reasonable doubt that the following persons were detained in the lock-up cells in SJB Bugojno during the above indicated period of time: Kazimir Kaić, Tomislav Turalija, Ivica Pavlović and others. Witness Mirko Tomljenović testified that an attack was launched on 19 July 1993 and that he was taken to MUP.⁴⁷⁵ Witness Dragan Nevjestić testified that they were taken prisoner in the Post Office on 19 July 1993.⁴⁷⁶ Witness Ivica Pavlović confirmed that they were taken prisoner on 19 July 1993.⁴⁷⁷ Further, witness Tomislav Turalija testified that all of them (15 or 16) surrendered.⁴⁷⁸

345. Witness Kazimir Kaić testified that he was taken to donate blood with Zlatko Sušilović, and that detainees were taken in twos. This witness emphasized that he did not voluntarily donate blood on that occasion, but that he and Zlatko Sušilović

⁴⁷⁵ Mirko Tomljenović (20 August 2008).

⁴⁷⁶ Dragan Nevjestić (25 March 2009).

⁴⁷⁷ Ivica Pavlović (3 November 2010).

⁴⁷⁸ Tomislav Turalija (25 February 2009).

were ordered to donate blood.⁴⁷⁹ Witness Tomislav Turalija also testified that he was taken to donate blood “[...] right across the street to the Health Center”.⁴⁸⁰ He testified that three uniformed members of the Army of BiH came one evening and sought detainees with type B blood. Turalija did not volunteer because he was detained and did not want to cooperate with the soldiers. He also explained that he did not feel strong enough to give blood as there was insufficient food. He knew he had blood type B as he had donated blood on more than 30 occasions before the war. On this occasion no one was taken to donate blood. Later that night, a group of members of the Army of BiH again came to the lock-up cells in Bugojno SJB and threatened to take blood samples from all detainees to check if any of them had blood type B. At that point, frightened, he admitted to having type B blood and was taken to the Health Center with Ivica Pavlović. According to his testimony, 400 grams of blood was taken from him on that occasion.

346. Witness Stjepan Radoš also testified that he was taken to donate blood together with ten other detainees. He was taken under escort to the Health Center where he gave blood. This witness further stated that no one asked him if he wanted to give blood and assumed that approximately 300-350 ml of blood was taken from him.⁴⁸¹

347. Defense witness Ivica Pavlović also confirmed that he was detained in SJB Bugojno. He testified that there was an initiative to donate blood, that the detainees themselves consented to donate blood and that no coercive pressure was placed upon on them.⁴⁸² The Panel did not give credence to the testimony of this witness in this part.⁴⁸³ Witness Pavlović's account is not corroborated or consistent with other evidence, including the accounts of prosecution witnesses. Moreover, given the fact that the blood donation program took place in a detention center, his testimony seems unreasonable and not credible. There are therefore no grounds on which the Panel could favor his testimony over the testimony of the prosecution witnesses who testified to the same circumstances. This witness's testimony is unconvincing and

⁴⁷⁹ Kazimir Kaić (8 April 2009).

⁴⁸⁰ Tomislav Turalija (25 February 2009).

⁴⁸¹ Stjepan Radoš (27 August 2008).

⁴⁸² Ivica Pavlović (3 November 2010).

⁴⁸³ Ivica Pavlović (3 November 2010).

contrary to the testimony of other witnesses who testified to the same circumstances. Because of that, the Panel did not regard this witness' testimony as credible.

348. The Panel also concludes that the Defense failed to offer sufficient evidence that would suggest that coercion was not the norm. The Defense argued that witnesses Eniz Rujanac and Mustafa Strukar testified that detainees were not coerced into donating blood, however these witnesses merely stated that they did not know whether the detainees were forced to donate blood. It should be noted that these witnesses are medical doctors and that it is not to be expected that as such they would testify about procedures that potentially violate medical ethics. Moreover, testifying to the opposite could incriminate the witnesses themselves, who are not obliged to answer questions that could expose them to criminal prosecution. However, it is very important to note that the witnesses confirmed that in that period, especially during and immediately after the conflict, the Bugojno Wartime Hospital needed blood to conduct operations.⁴⁸⁴

349. Witness Tomislav Turalija testified that detainees were taken to donate blood needed by the Wartime Hospital.⁴⁸⁵ The fact that the Wartime Hospital needed blood is confirmed by the Prosecution exhibit T-640, which contains a note dated 25 July 1993 entitled "blood for the Wartime Hospital", which by its very existence implies the urgent need of the Wartime Hospital for blood. This was corroborated by both defense and prosecution witnesses. Witnesses Eniz Rujanac and Mustafa Strukar testified that it was necessary to secure blood for operations on wounded persons who were admitted to the Wartime Hospital on a daily basis.⁴⁸⁶ Witness Admir Slipac, who provided security to the Wartime Hospital, also testified that he was present while one wounded individual was being treated, and that it was necessary to secure blood on that occasion.⁴⁸⁷

350. Witness Tomislav Turalija described the manner in which blood was drawn from detainees. He testified that, in his own perception, a lot of blood was taken; so much so that he confronted the nurse by saying "You will surely not allow that bag to

⁴⁸⁴ Eniz Rujanac (10 November 2010); Mustafa Strukar (10 November 2010).

⁴⁸⁵ Tomislav Turalija (25 February 2009).

⁴⁸⁶ Eniz Rujanac (10 November 2010); Mustafa Strukar (10 November 2010).

⁴⁸⁷ Admir Slipac (25 March 2008).

burst!". This elicited no response from the nurse.⁴⁸⁸ Witness Kazimir Kaić testified that after blood was drawn from the detainees they were taken back to the Bugojno SJB, and that no privileges or extra food or fluids were provided to the detainees to compensate for their blood loss.⁴⁸⁹ Witness Tomislav Turalija also testified that he was concerned, after blood had been drawn from him, as to how he was going to make up for it because of the conditions in which he lived during his detention in the lock-up cells in the Bugojno SJB.

351. The Panel finds that drawing blood in the manner described above from detainees who were held in the Bugojno SJB resulted in serious mental or physical pain and suffering, and therefore constitutes the crime of inhuman treatment.

3. General Factual Findings (Gymnasium)

(a) In the period from 18 July 1993 until approximately mid-September 1993, after the shortage of blood supply was discussed at the sessions of the Bugojno Municipality Wartime Presidency, which were either attended by Senad Dautović or of which he was informed, and after it was decided to secure the needed blood supply

352. The Panel finds that in the period from 18 July 1993 until approximately mid-September 1993, after the shortage of blood supply was discussed at the sessions of the Bugojno Municipality Wartime Presidency, which were either attended by Senad Dautović or of which he was informed, and after it was decided to secure the needed blood supply.

353. The Panel is satisfied that the Prosecution has proved beyond a reasonable doubt that during the above indicated period of time, Senad Dautović attended or was informed of the sessions of the Wartime Presidency at which the shortage of blood supply at the Bugojno Wartime Hospital was discussed, and that Senad Dautović was tasked with mobilizing blood donors.

⁴⁸⁸ Tomislav Turalija (25 February 2009).

⁴⁸⁹ Kazimir Kaić (8 April 2009).

(b) armed members of the Army of RBiH, Bugojno Defense Staff and SJB Bugojno, started taking out from the inadequate basement premises of SJB Bugojno detained persons of Croat ethnicity, among them Zoran Gvozden and other detainees, whereupon they took them to the Health Center in Bugojno, which was also home to the Bugojno Wartime Hospital at the time and which is located right across the street from the SJB Bugojno

354. The Panel finds that armed members of the Army of RBiH, Bugojno Defense Staff and SJB Bugojno, started taking out from the inadequate basement premises of SJB Bugojno detained persons of Croat ethnicity, among them Zoran Gvozden and other detainees, whereupon they took them to the Health Center in Bugojno, which was also home to the Bugojno Wartime Hospital at the time and which is located right across the street from the SJB Bugojno.

355. The Panel is satisfied that the Prosecution has proved beyond a reasonable doubt that during the period of time indicated above, persons of Croat ethnicity were detained in the Gymnasium where the Police Station Centar (part of the Bugojno SJB) was located. The Panel will explain in greater detail who the persons detained in the Gymnasium were and under what conditions they were held in the section of the Verdict concerning the Gymnasium (paragraph 397).

356. Zoran Gvozden testified that during his detention in the Gymnasium he was taken out only once, and that was to the Health Center to donate blood. He was escorted to the Health Center by two members of the Army of BiH. He stated that they sought detainees with blood type O and that none of the detainees volunteered. His blood type was checked in the records and he was taken to have his blood drawn. He testified he had a “double dose” drawn from him. This witness testified they took a “double dose” because another detainee, who was taken together with him, said that he had had hepatitis in the past, and accordingly could not be used.⁴⁹⁰

357. Witness Gvozden testified that he generally donated blood voluntarily, but that he did not donate blood voluntarily on that occasion.⁴⁹¹ Witness Gvozden's testimony

⁴⁹⁰ Zoran Gvozden (21 January 2009).

⁴⁹¹ Zoran Gvozden (21 January 2009).

was corroborated by Witness D.⁴⁹² Witness Dragan Nevjestić corroborated that detainees were taken to donate blood. He stated that his blood was not taken because he had had hepatitis in the past.⁴⁹³

358. The Panel heard from two defense witnesses, Eniz Rujanac and Mustafa Strukar.⁴⁹⁴ Both were doctors at the wartime hospital. Both testified that they had performed medical procedures there. Both denied having any knowledge of forced blood-taking. The Panel finds that their accounts were contrary to the accounts of the Prosecution witnesses. The Panel notes that their testimony has been analyzed separately in earlier paragraphs of the Verdict.

(c) where they subjected the detainees to cruel and inhuman treatment by forcing them to donate blood for the wounded members of the Army of RBiH Bugojno, SJB Bugojno and Bugojno Defense Staff, with the nurses taking blood against their will, after which the detainees were taken back to the basement of the Police Station Centar Bugojno in the Gymnasium and detained there

359. The Panel found that they subjected the detainees to cruel and inhuman treatment by forcing them to donate blood for the wounded members of the Army of RBiH Bugojno, SJB Bugojno and Bugojno Defense Staff, with the nurses taking blood against their will, after which the detainees were taken back to the basement of the Police Station Centar Bugojno in the Gymnasium and detained there.

360. The Panel is satisfied that the Prosecution has proved beyond a reasonable doubt that the detainees were subjected to cruel and inhuman treatment when donating blood, especially bearing in mind that the detainees did not voluntarily consent to donate blood, as noted above.

⁴⁹² Witness D (21 January 2009).

⁴⁹³ Dragan Nevjestić (25 March 2009).

⁴⁹⁴ Eniz Rujanac (10 November 2010); Mustafa Strukar (10 November 2010).

4. Acts of Senad Dautović (Slavonija Di Furniture Salon, Bugojno SJB and the Gymnasium)

(a) while the accused Senad Dautović, as one of the commanders of the Unified Command of the Army of RBiH Bugojno - Defense of the Bugojno town and Chief of SJB Bugojno, by the nature of which position he was a member of the Bugojno Municipality Wartime Presidency, knowingly and with the intention of executing the common purpose of the joint criminal enterprise which he joined, knew that the detainees in the Furniture Salon were forced to donate blood in the manner described above, with his participation in the joint criminal enterprise by his acts and failure to act, he significantly contributed to this joint criminal enterprise

(b) while Senad Dautović, as one of the commanders of the Unified Command of the Army of RBiH Bugojno - Defense of the Bugojno town and Chief of SJB Bugojno, by the nature of which position he was a member of the Bugojno Municipality Wartime Presidency, knowingly and with the intention of executing the common purpose of the joint criminal enterprise which he joined, knew that the detainees at the Police Station Centar Bugojno and SJB Bugojno were forced to donate blood in the manner described above, with his participation in the joint criminal enterprise by his acts and failure to act, he significantly contributed to this joint criminal enterprise

361. The Panel finds while the Accused Senad Dautović, as one of the commanders of the Unified Command of the Army of RBiH Bugojno - Defense of the Bugojno town and Chief of SJB Bugojno, by the nature of which position he was a member of the Bugojno Municipality Wartime Presidency, knowingly and with the intention of executing the common purpose of the joint criminal enterprise which he joined, knew that the detainees in the Furniture Salon were forced to donate blood in the manner described above, with his participation in the joint criminal enterprise by his acts and failure to act, he significantly contributed to this joint criminal enterprise.

362. The Panel further finds that while Senad Dautović, as one of the commanders of the Unified Command of the Army of RBiH Bugojno - Defense of the Bugojno town and Chief of SJB Bugojno, by the nature of which position he was a member of the Bugojno Municipality Wartime Presidency, knowingly and with the intention of executing the common purpose of the joint criminal enterprise which he joined, knew

that the detainees at the Police Station Centar Bugojno were forced to donate blood in the manner described above, with his participation in the joint criminal enterprise by his acts and failure to act, he significantly contributed to this joint criminal enterprise.

363. The Panel is satisfied that the Prosecution has proved beyond a reasonable doubt that Senad Dautović was one of the commanders of the Unified Command of the Army of RBiH – Defense of the Bugojno town and Chief of SJB Bugojno (by virtue of which he was a member of the Bugojno Municipality Wartime Presidency) during the relevant period of time.

364. Expert witness Fikret Muslimović explained how the Unified Command came into being in the Bugojno area. Its existence was confirmed by witness Selmo Cikotić. According to the testimony of witness Selmo Cikotić, the establishment of the Unified Command was contrary to the rules in the Army of BiH. The Panel has explained above (in paragraphs 225 – 226) the process of establishment and operation of the Unified Command.

365. Exhibit T-514 shows that the Order was signed by Senad Dautović as a commander, which confirms that Senad Dautović was one of several commanders in the Unified Command. Selmo Cikotić also confirmed that Senad Dautović was one member of the Unified Command. In light of the evidence adduced at the main trial, the Panel partially changed the factual description of the Indictment in this respect, mindful that the change is not to the detriment of the Accused and concluded that the Accused Dautović was one of several commanders of the Unified Command, and not the sole Commander of the Unified Command.

366. Based on the testimony of witness Dževad Mlaćo and exhibit T-640 the Trial Panel concludes that the Accused was a member of the Wartime Presidency.⁴⁹⁵ Dževad Mlaćo confirmed that the Accused Dautović was a member of the Wartime Presidency. Exhibit T-640 shows that Dautović attended most sessions of the Wartime Presidency and that if he was absent from the session, a note was made of his absence. The Defense did not dispute the fact that he was a member of the Wartime Presidency in the course of the evidentiary proceedings.

367. In exhibit T-600 it was noted that Senad Dautović held the position of the Chief of the Bugojno SJB from 20 March 1993 until 13 November 1993.⁴⁹⁶ Defense for the Accused Dautović did not dispute the fact that he was the Chief of the Bugojno SJB during this period. The Defense argued, however, that Senad Dautović stayed in this position until 7 December 1993. In support of their contention, the Defense relied on exhibit T-585.⁴⁹⁷ The Defense further claimed that Senad Dautović assumed the position of Assistant Commander for Security on 7 December 1993. The Indictment alleges that Senad Dautović held the position of the Chief of the Bugojno SJB until approximately mid-November.

368. In this respect, based on the adduced evidence the Panel changed the factual description of the Indictment by specifying that Senad Dautović held the position of the Assistant Commander for Security as of 13 November 1993. Exhibit T-600 shows that Senad Dautović held the post of Chief of the Bugojno SJB from 20 March until 13 November 1993, and that he moved to the position of the Assistant Commander for Security on 13 November 1993.⁴⁹⁸ Furthermore, it is evident from exhibit O-10/1 that an Order was signed by Senad Dautović on 30 November 1993 as the Chief of the Security Service, which indicates that Dautović was in the Operations Group "West" prior to 7 December 1993.⁴⁹⁹

369. Based on the above, the Panel concludes that Senad Dautović assumed the position of the Assistant Commander for Security on 13 November 1993.

370. As for the presence of military structures at sessions of the Wartime Presidency, Selmo Cikotić mentioned in his testimony that he himself occasionally attended sessions of the Wartime Presidency and that these sessions were also attended by the Brigade Commander, Commander of the Territorial Defense (TO) Municipal Staff, and occasionally by other members of the military apparatus of the Army of BiH.⁵⁰⁰

⁴⁹⁵ See generally T-640 (Dževad Mlaćo's journal).

⁴⁹⁶ T-600 (Personal file of Senad Dautović).

⁴⁹⁷ T-585 (Record on the handover of documentation to the Security Organ of OG "West" dated 7 December 1993).

⁴⁹⁸ T-600 (Personal file of Senad Dautović).

⁴⁹⁹ O-10/1 (Order of OG "West" dated 30 November 1993).

⁵⁰⁰ Selmo Cikotić (21 April 2010).

371. The presence of members of the Army of BiH, more precisely of OG West and the 307th Brigade, is noted in exhibit T-640. For example, Tahir Granić attended the 26 July 1993 session of the Wartime Presidency. According to the evidence adduced at the main trial, Tahir Granić was the Commander of the 307th Motorized Brigade. Tahir Granić also attended the 1 August 1993 regular session of the Wartime Presidency, the 4 August 1993 session, and a few others.

372. Moreover, the sessions of the Wartime Presidency held on 8 August 1993, 9 August 1993 and 12 August 1993 were attended by Selmo Cikotić (the Commander of the Operations Group “West”). Witness Selmo Cikotić confirmed his presence at these sessions of the Wartime Presidency.⁵⁰¹

373. Based on these testimonies, the Panel concludes that Senad Dautović was an integral part of the Wartime Presidency. He was present at the 14 August 1993 meeting, and thus was informed of the plan to secure blood supply, that is, to draw blood from the detainees, as well as the fact that he was assigned to see the plan through. In addition, the persons who secured the Bugojno Health Center where the Wartime Hospital was located were Senad Dautović's subordinates, and some of his subordinates went to the *Slavonija Di* Furniture Salon and took the detainees to the Wartime Hospital to provide blood.

374. In addition, the Panel concludes that Senad Dautović exercised authority over the SJB Bugojno police. Moreover, the members of the Army of BiH and the Bugojno Defense Staff who brought Croat detainees from the Furniture Salon to the Wartime Hospital also operated pursuant to his instruction. These actions were taken to fulfill Dautović's plan to secure the needed blood supply. The Panel concludes that Tahir Granić was also a member of this joint criminal enterprise, given the fact that his subordinates were utilized by Senad Dautović to obtain blood.

375. There were a series of joint decisions made by members of the Wartime Presidency and others to secure the blood supply. Senad Dautović was a member of this group and accepted responsibility for implementing the plan. This amounts to a significant contribution to a joint criminal enterprise.

⁵⁰¹ Selmo Cikotić (21 April 2010).

376. In this case the acts speak for themselves. There can be no doubt that Senad Dautović intended for these acts to take place. As Chief of Police he was aware of how to properly treat prisoners. He knew that medical procedures of this type could not be forced on a prisoner or unwilling donors.

377. There is no indication in Mlačo's journal that Senad Dautović refused this assignment. There is no indication that he made any type of protest as to the illegality of these actions. At no point did Dautović resign from the Wartime Presidency, protest its decisions or take any action that might indicate his lack of intention to join in the implementation of this plan. The acts which followed the meeting on the 14 August 1993 indicate that the task was accepted and that Dautović focused on accomplishing the objectives of the assignment.

378. In the preceding paragraphs, the Panel has explained how Senad Dautović, by his silence and inaction, participated in the common plan to secure the blood supply. However, as chief of police he also had direct responsibility for the activities at the SJB Bugojno, as well as supervisory authority over the police officers present. His use of his subordinates to implement the task of securing the blood supply amounted to a significant contribution to the joint criminal enterprise.

379. The events that took place in his police station clearly demonstrate his intent to participate in the crime as well as his intent to join in with the larger group. Two of the sites where the relevant conduct took place were areas where he exercised complete control (SJB and Gymnasium); had he wished to stop or prevent the criminal actions he could have. The evidence evinces a clear pattern of intended behavior. These were not random or unplanned acts, but were rather the result of a common plan to ensure that the local hospital had blood supply needs met.

380. The Trial Panel thus concludes that the act of taking blood from these detainees amounted to cruel and inhuman treatment. Moreover, these acts were the result of a joint criminal enterprise planned by members of the Wartime Presidency and executed by civilian and military personnel. The plan was implemented by Senad Dautović, by which he made a significant contribution to the joint criminal enterprise, inasmuch as he failed to object to or decline to participate in the decision of the Wartime Presidency to secure blood and he took action to ensure that the

forced blood donations took place.

C. AT THE SJB BUGOJNO

1. General Factual Findings

(a) In the period between 19 July 1993 and 25 August 1993, Senad Dautović allowed that members of the Bugojno SJB detain and keep detained on the premises of the Bugojno SJB, in the holding cells in the basement of the Bugojno SJB, male persons of Croat ethnicity who surrendered to members of the Bugojno SJB, among them: Kazimir Kaić, Zlatko Sušilović, Tomislav Turalija, Ivica Pavlović and other detainees who were detained on too small premises, only to escort them to the Gymnasium in Bugojno where the Police Station Centar of the Public Security Station Bugojno was quartered and detained them in the basement of the Gymnasium where a large number of persons of Croat ethnicity had already been detained

381. The Panel finds that in the period between 19 July 1993 and 25 August 1993, Senad Dautović allowed that members of the Bugojno SJB detain and keep detained on the premises of the Bugojno SJB, in the holding cells in the basement of the Bugojno SJB, male persons of Croat ethnicity who surrendered to members of the Bugojno SJB, among them: Kazimir Kaić, Zlatko Sušilović, Tomislav Turalija, Ivica Pavlović and other detainees who were detained on too small premises, only to escort them to the Gymnasium in Bugojno where the Police Station Centar of the Public Security Station Bugojno was quartered and detained them in the basement of the Gymnasium where a large number of persons of Croat ethnicity had already been detained.

382. The Panel finds that the Prosecution proved a beyond reasonable doubt that male persons of Croat ethnicity were detained in the holding cells of the Bugojno SJB for the period of time mentioned above. The act of continuing to detain prisoners for a brief period of time after a conflict has ended is not *per se* illegal. However, detaining individuals in conditions that are inhumane can constitute a criminal act.

383. Witnesses Mirko Tomljenović,⁵⁰² Dragan Nevjestić,⁵⁰³ Ivica Pavlović⁵⁰⁴ and Tomislav Turalija⁵⁰⁵ testified that they surrendered to members of the Bugojno SJB on 19 July 1993 and that they were subsequently taken to the holding cells of the Bugojno SJB. Witness Kazimir Kaić testified that he was in his apartment on 19 July 1993 when two policemen came for him and took him to the premises of MUP.⁵⁰⁶ This witness further testified that he had been taken out for interrogation once and that his personal details were recorded on this occasion.

384. In his testimony, witness Kazimir Kaić stated that a furniture van came one day and that all detainees from the Bugojno SJB were transported to the Gymnasium.⁵⁰⁷

385. Further, it is evident from exhibit T-579 (Daily Bulletin of the Bugojno Public Security Station, dated 25 August 1993) that all the detainees from the Bugojno SJB were transferred to the Gymnasium building.⁵⁰⁸ The Panel is satisfied that the Prosecution has proved beyond a reasonable doubt that the detainees who had been detained in the holding cells of the Bugojno SJB were transferred to the Gymnasium on 25 August 1993.

386. This fact is important, as it indicates the time period in which the detainees were held at the police station. Based on these facts the Panel concludes that the detainees were held in overcrowded conditions at the police station for approximately 35 days.

387. It follows from exhibit T-579 that male persons of Croat ethnicity were detained in the holding cells of the Bugojno SJB.⁵⁰⁹ Witness Dragan Nevjestić testified that 17 of them surrendered and that they were all taken to the MUP and detained in the basement.⁵¹⁰ Witness Ivica Pavlović also testified that 17 of them surrendered and were taken to the MUP building and detained in the basement. He

⁵⁰² Mirko Tomljenović (20 August 2008).

⁵⁰³ Dragan Nevjestić (25 March 2009).

⁵⁰⁴ Ivica Pavlović (3 November 2010).

⁵⁰⁵ Tomislav Turalija (25 February 2009).

⁵⁰⁶ Kazimir Kaić (8 April 2009).

⁵⁰⁷ Kazimir Kaić (8 April 2009).

⁵⁰⁸ Exhibit T-579 (Daily Bulletin of the Bugojno Public Security Station dated 25 August 1993).

⁵⁰⁹ T-579 (Daily Bulletin of the Bugojno Public Security Station dated 25 August 1993).

⁵¹⁰ Dragan Nevjestić (25 March 2009).

also stated that they were “crammed in the basement, there were three cells there”.⁵¹¹ It is evident from the witness accounts that these cells were located in the basement and that they were too small for the number of persons detained.

388. The crowded basement conditions that prevailed for about 35 days amounted to cruel treatment. It should be noted that the Wartime Presidency had the ability to find, secure and appropriate buildings as needed. Granted, there were probably limited buildings available for this initial detention. But no showing was made that other buildings could not have been utilized to alleviate the overcrowded conditions.

2. Acts of Senad Dautović

(a) Senad Dautović, as the Chief of SJB Bugojno, by the nature of which position he was a member of the Bugojno Municipality Wartime Presidency, allowed the detention of those persons on the premises of the Bugojno SJB although he knew the premises were inadequate for such a large number of detainees

389. The Panel finds that Senad Dautović, as the Chief of SJB Bugojno, by the nature of which position he was a member of the Bugojno Municipality Wartime Presidency, allowed the detention of those persons on the premises of the Bugojno SJB although he knew the premises were inadequate for such a large number of detainees.

390. In preceding paragraph 233, the Panel explained that Senad Dautović was the Chief of SJB Bugojno during the relevant period of time.

391. Exhibit T-600 clearly shows that the Accused Senad Dautović held the position of the Chief of Police from 20 March 1993 until 13 November 1993.⁵¹² Defense for Dautović did not dispute that he held the office of the Chief of Police.

392. In addition, the Panel explained above that Senad Dautović was a member of the Bugojno Wartime Presidency. The Defense did not dispute the fact that Senad Dautović was a member of the Wartime Presidency.

⁵¹¹ Ivica Pavlović (3 November 2010).

⁵¹² T-600 (Personal file of Senad Dautović).

393. Based on all of the above, the Panel concludes that Senad Dautović was the Chief of the Bugojno SJB and that he allowed persons of Croat ethnicity be detained in the holding cells of the Bugojno SJB in an inhumane manner. As such he bears criminal responsibility.

394. Senad Dautović, as Chief of Police, was responsible for the care of the detainees who were detained in the holding cells in the Bugojno SJB. The evidence indicates that he had knowledge of the conditions. First he spoke to detainees about their conditions. Second, he was often on site, as the Bugojno SJB was his workplace. Third, as the Chief he was aware of who was in the building, how many prisoners were held there and what the detention conditions were. The poor conditions in which detainees were held would have been apparent to anyone in the Chief's position, as the overcrowding problem was both obvious and enduring (lasting as it did for over a month).

395. In fact, witness Ivica Pavlović testified that a guard at the Bugojno SJB told him that Senad Dautović was "the prison commander".⁵¹³ The witness further stated that he spoke to Dautović and requested release in light of his health condition and the poor conditions in detention. According to this witness's testimony, Dautović initially replied that he could not release him until the situation was resolved.⁵¹⁴ Pavlović however, was released the next day as a result of his health condition. This indicates to the Panel that Dautović had knowledge of the conditions as well as substantial control over the detainees in his care.

⁵¹³ Ivica Pavlović (3 November 2010).

⁵¹⁴ Ivica Pavlović (3 November 2010).

D. IN THE GYMNASIUM BUILDING IN BUGOJNO AND HEALTH CENTRE – WARTIME HOSPITAL

BUGOJNO

1. General factual findings

(a) During the period from 19 July 1993 until about 8 October 1993, Senad Dautović allowed members of the Police Station Centar of the Bugojno Public Security Station, which was based in the Gymnasium building in Bugojno, and Bugojno SJB, to detain and keep detained in the inadequate and small basement, in the gym of the Gymnasium building and on other premises of the Gymnasium persons of Croat ethnicity, a total of up to 100 detainees, who did not have enough food, water, light, ventilation, free access to toilets and who were deprived of the possibility to maintain personal hygiene, and approximately on 8 October 1993 all detainees who were on the premises at the time were transferred to the FC *Iskra* Stadium camp in Bugojno, while Senad Dautović, as Chief of SJB Bugojno, allowed the detention of those persons on the premises of the Police Station Centar of the Bugojno SJB although he knew the premises were inadequate for such a large number of detainees and that basic conditions were not provided for the stay of detainees on those premises

396. The Panel finds that during the period from 19 July 1993 until about 8 October 1993, Senad Dautović allowed members of the Police Station Centar of the Bugojno Public Security Station, which was based in the Gymnasium building in Bugojno, and the Bugojno SJB, to detain and keep detained in the inadequate and small basement, in the gym of the Gymnasium building and on other premises of the Gymnasium persons of Croat ethnicity, a total of up to 100 detainees, who did not have enough food, water, light, ventilation, free access to toilets and who were deprived of the possibility to maintain personal hygiene, and on around 8 October 1993 all detainees who were on the premises at the time were transferred to the FC *Iskra* Stadium camp in Bugojno, while Senad Dautović, as Chief of SJB Bugojno, allowed the detention of those persons on the premises of the Police Station Centar of the Bugojno SJB although he knew that the premises were inadequate for such a large number of detainees and that basic conditions were not provided for stay of the detainees on those premises.

397. The Panel is satisfied that the Prosecution has proved beyond a reasonable

doubt that between 19 July 1993 (*not* 18 July 1993, as alleged in the Indictment) and 8 October 1993, persons of Croat ethnicity were detained in the Police Station (Precinct) of the Bugojno SJB located on the premises of the Bugojno Gymnasium. This was shown by the testimony of witnesses Ivica Đikić,⁵¹⁵ Božo Križanac,⁵¹⁶ Kazimir Kaić,⁵¹⁷ Dragan Boškić,⁵¹⁸ Ozren Gvozdenović,⁵¹⁹ Rade Marijanović,⁵²⁰ Stjepan Cvijanović,⁵²¹ Damir Kolovrat,⁵²² Berislav Džalto,⁵²³ Slaven Brajković,⁵²⁴ Dragan Kasalo,⁵²⁵ witness B,⁵²⁶ Željko Ištuk,⁵²⁷ Ivo Mršo,⁵²⁸ Gordan Raić,⁵²⁹ Frano Vejić,⁵³⁰ Miroslav Zelić,⁵³¹ Marko Gunjača,⁵³² Ivica Klarić,⁵³³ Stipica Džapić,⁵³⁴ witness D,⁵³⁵ Berislav Jezidžić⁵³⁶ and Zoran Gvozden.⁵³⁷ These witnesses stated that they were brought to the Gymnasium on 19 July 1993. Some witnesses, including witness B and Ivo Mršo, were taken from their apartments. Others surrendered and were taken immediately to the Gymnasium, and some were brought from other locations where they had been detained. According to exhibit T-579 some prisoners were transferred from the Bugojno SJB to the Gymnasium building.⁵³⁸ In light of the above evidence, the Panel has amended the factual description of the Indictment pertaining to the time period in which the detainees had been taken to the Gymnasium building. The Panel established that 19 July 1993 was the date when detention began, pursuant to the evidence adduced during the main trial.

⁵¹⁵ Ivica Đikić (17 December 2008).

⁵¹⁶ Božo Križanac (25 February 2009).

⁵¹⁷ Kazimir Kaić (8 April 2009).

⁵¹⁸ Dragan Boškić (20 March 2008).

⁵¹⁹ Ozren Gvozdenović (10 December 2008).

⁵²⁰ Rade Marijanović (11 March 2009).

⁵²¹ Stjepan Cvijanović (11 March 2009).

⁵²² Damir Kolovrat (4 March 2009).

⁵²³ Berislav Džalto (25 June 2008).

⁵²⁴ Slaven Brajković (3 September 2008).

⁵²⁵ Dragan Kasalo (12 November 2008).

⁵²⁶ Witness B (26 November 2008).

⁵²⁷ Željko Ištuk (23 April 2008).

⁵²⁸ Ivo Mršo (22 October 2008).

⁵²⁹ Gordan Raić (13 February 2008).

⁵³⁰ Franjo Vejić (13 February 2008).

⁵³¹ Miroslav Zelić (20 February 2008).

⁵³² Marko Gunjača (20 February 2008).

⁵³³ Ivica Klarić (27 February 2008).

⁵³⁴ Stipica Džapić (27 February 2008).

⁵³⁵ Witness D (21 January 2009).

⁵³⁶ Berislav Jezidžić (21 January 2009).

⁵³⁷ Zoran Gvozden (21 January 2009).

⁵³⁸ T-579 (Daily bulletin of the Bugojno Public Security Station dated 25 August 1993).

398. The Police Station (Precinct) of the Bugojno SJB was based in the Gymnasium building. This is not to be confused with the main SJB station in Bugojno located across from the hospital. According to witnesses, Besim Hodžić was the Commander of the Police Station (Precinct) Gymnasium building and Senad Dautović was the Chief of Police. Witness Besim Hodžić stated that he was transferred to the Bugojno Police Station in March 1993. He also explained that the entire Military Police unit of the Bugojno Territorial Defense was transferred to the Police Station in Bugojno, that his distant superior was Senad Dautović but that Mustafa Jusić was his immediate superior,⁵³⁹ and that he had been Mustafa Jusić's deputy for a period of time.

399. Witness Jasmin Ivković stated that he personally requested to be transferred from the Army of BiH to the civilian police in early 1993.⁵⁴⁰ Mustafa Jusić was the Commander at the time, while Senad Dautović was the Chief of the Bugojno SJB.⁵⁴¹ Ivković further stated that he received orders from Commander Jusić and that Jusić received orders from Dautović. This witness explained that the police were quartered in the Gymnasium building, and that Besim Hodžić was the Commander of the Police Station (Precinct) at the Gymnasium.⁵⁴² He stated that Nijaz Bevrnja was a member of the Bugojno SJB.

400. Witness Semir Osmić, who was in the civilian police at the relevant time, stated that he was originally a member of the military police under the command of Besim Hodžić. On 20 March 1992 his military unit joined the civilian police.⁵⁴³ He explained in his testimony that this transfer to the civilian police did not involve any relocation. Despite the change in status, the unit remained in the Gymnasium building. He confirmed that Mustafa Jusić was the Commander and Senad Dautović was the Chief of SJB Bugojno. Witness Sead Tulić corroborated this. He stated that he was a volunteer assigned to the military police, the entire unit joined the reserve component of the civilian police and Senad Dautović was the Chief of Police.⁵⁴⁴

⁵³⁹ Besim Hodžić (1 December 2010).

⁵⁴⁰ Jasmin Ivković (22 April 2009).

⁵⁴¹ Jasmin Ivković (22 April 2009).

⁵⁴² For the sake of clarification, the Panel notes that both commanders were subordinate to Senad Dautović.

⁵⁴³ Semir Osmić (11 March 2009).

⁵⁴⁴ Semir Osmić (11 March 2009).

401. Witness Enes Handžić stated that the reserve component of the civilian police provided security in the Gymnasium building. Besim Hodžić was the immediate superior to this component, while Senad Dautović was the Chief of Police.⁵⁴⁵

402. Based on exhibit T-561 (Request to the Wartime Presidency of the Bugojno Municipality dated 6 September 1993) it is apparent to the Panel that the Commissioner for Education requested that the Wartime Presidency restore the Gymnasium to its original purpose once the units of the Ministry of the Interior (MUP) vacated its premises.⁵⁴⁶ This is noteworthy, inasmuch as it confirms that the Wartime Presidency was in charge of appropriating and reallocating space to benefit the needs of the civilian authorities.

403. Witnesses Kazimir Kaić,⁵⁴⁷ Jasmin Ivković⁵⁴⁸ and Bernes Gavranović⁵⁴⁹ identified Nijaz Bevrnja as one of the guards in the Gymnasium. Witnesses Bernes Gavranović⁵⁵⁰ and Sead Talić⁵⁵¹ identified Ferid Hota as Besim Hodžić's deputy in the Gymnasium.

404. It follows from exhibit T-175 (List of members of the Bugojno SJB) that Mustafa Jusić, Ferid Hota and Nijaz Bevrnja were police officers on active duty in the Bugojno SJB.⁵⁵² Mustafa Jusić was listed under No. 20, Nijaz Bevrnja under No. 24 and Ferid Hota under No. 81 in exhibit T-175. This list was signed by Senad Dautović as the Chief of the Bugojno SJB on 11 August 1993.

405. The list of members of the SJB Bugojno (exhibit T-553) shows that Ferid Hota, Mustafa Jusić, Besim Hodžić and Nijaz Bevrnja were all members of the Bugojno SJB.⁵⁵³ Witnesses Bernes Gavranović, Semir Osmić and Sead Talić testified they were also members of the police.

406. This evidence clearly shows that the unit was under civilian command, specifically the command of Senad Dautović. Accordingly, the Panel does not accept

⁵⁴⁵ Enes Handžić (1 June 2011).

⁵⁴⁶ T-561 (Request to the Wartime Presidency of the Bugojno Municipality dated 6 September 1993).

⁵⁴⁷ Kazimir Kaić (8 April 2009).

⁵⁴⁸ Jasmin Ivković (22 April 2009).

⁵⁴⁹ Bernes Gavranović (6 May 2009).

⁵⁵⁰ Bernes Gavranović (6 May 2009).

⁵⁵¹ Sead Talić (11 March 2009).

⁵⁵² T-175 (List of members of the Bugojno SJB).

the Accused Dautović's defense that it was military police and not civilian police who were quartered in the Gymnasium building in Bugojno.

407. The Panel concludes that Senad Dautović was the Chief of Police until 13 November 1993. This is based primarily on the personal file of the Accused Dautović.⁵⁵⁴ The Defense did not contest that the Accused Dautović was the Chief of the Bugojno SJB.

408. The Panel is satisfied that the Prosecution has proved beyond a reasonable doubt that up to 100 persons of Croat ethnicity were detained in the gym, basement and other premises of the Gymnasium building. This is based on the consistent testimony of Kazimir Kaić,⁵⁵⁵ Dragan Boškić,⁵⁵⁶ witness B,⁵⁵⁷ Ivo Mršo⁵⁵⁸ and Ivica Klarić.⁵⁵⁹ Each of these witnesses testified that up to 100 persons of Croat ethnicity had been detained on the Gymnasium premises.

409. It is evident from the testimony of the witnesses that the detention conditions in the Gymnasium were inhumane. Witness Gordan Raić stated that they were detained in three cells, that he was in the middle one and that there was not enough space.⁵⁶⁰ Witness Marko Gunjača stated that they were crammed in the Gymnasium and that those who wanted to use the toilet were beaten.⁵⁶¹ Witness Rade Marijanović confirmed that the captives in the Gymnasium were detained in the basement, that there was no light, and that the ceiling was 180 cm high.⁵⁶² Witness Berislav Džalto claimed that, due to the low height of the ceiling, he could not stand straight in the room in which he was detained.⁵⁶³ Witness Dragan Kasalo testified that captives did not have enough air or light in the premises where they were detained, that they passed urine and stool in one bucket, and that access to the toilet

⁵⁵³ T-553 (List of members of the Bugojno SJB dated 30 September 1993).

⁵⁵⁴ T-600 (Personal file of Senad Dautović).

⁵⁵⁵ Kazimir Kaić (8 April 2009).

⁵⁵⁶ Dragan Boškić (20 March 2008).

⁵⁵⁷ Witness B (26 November 2008).

⁵⁵⁸ Ivo Mršo (22 October 2008).

⁵⁵⁹ Ivica Klarić (27 February 2008).

⁵⁶⁰ Gordan Raić (13 February 2008).

⁵⁶¹ Marko Gunjača (20 February 2008).

⁵⁶² Rade Marijanović (11 March 2009).

⁵⁶³ Berislav Džalto (25 June 2008).

was dependent on the good will of the guards. He clarified that they were let out of their rooms twice a day to eat.⁵⁶⁴

410. Witness Dragan Nevjestić confirmed that all persons who were there were transferred to the stadium during October.⁵⁶⁵ Witness Rade Marijanović stated that he was detained in the Gymnasium building for 70 days and then transferred to the stadium.⁵⁶⁶ Witness Slaven Brajković testified that he was transferred to the stadium after two months of detention and believed they were all transferred to the stadium together.⁵⁶⁷ Witness B stated that he was transferred to the stadium on 1 October 1993.⁵⁶⁸ The Panel has changed the factual description of the Indictment to read that the captives who were in detention at the Gymnasium were transferred to the FC *Iskra* camp.⁵⁶⁹ Based on the testimony of these witnesses, the Panel concludes that the detainees held in the Gymnasium were transferred to the FC *Iskra* Stadium around 8 October 1993.

411. A letter addressed to the Social Affairs Secretariat, Department of Education (Bugojno) was submitted into evidence. The letter, which was dated 14 October 1993, indicated that the Gymnasium was vacated and restored to its original purpose of teaching.⁵⁷⁰ The letter was signed by Senad Dautović in his capacity as the Chief of the SJB.

412. The Panel finds that the detainees were held in inhumane conditions in the Gymnasium where the Police Station (Precinct), which belonged to the Bugojno SJB, was based, and that they were transferred to the FC *Iskra* camp. The Panel notes that the changes made to the factual description are consistent with the adduced evidence and not detrimental to the Accused.

⁵⁶⁴ Dragan Kasalo (12 November 2008).

⁵⁶⁵ Dragan Nevjestić (25 March 2009).

⁵⁶⁶ Rade Marijanović (11 March 2009).

⁵⁶⁷ Slaven Brajković (3 September 2008).

⁵⁶⁸ Witness B (26 November 2008).

⁵⁶⁹ Some detainees were transferred from the Gymnasium to other locations before October. See Božo Križanac (25 February 2009).

⁵⁷⁰ T-194 (Letter of the Bugojno Municipal Command Staff dated 12 October 1993).

2. Acts of Senad Dautović

(a) Senad Dautović, as the Chief of SJB Bugojno, allowed the detention of those persons on the premises of the Police Station Centar of the Bugojno SJB, although he knew the premises were inadequate for such a large number of detainees and that basic conditions were not provided for the stay of detainees on those premises

413. The Panel finds Senad Dautović, as the Chief of SJB Bugojno, allowed the detention of those persons on the premises of the Police Station Centar of the Bugojno SJB, although he knew the premises were inadequate for such a large number of detainees and that basic provisions were available to accommodate the detainees on the premises.

414. The Panel concludes that Senad Dautović allowed the detention of persons of Croat ethnicity on the Gymnasium premises.

415. The Panel has previously concluded that Senad Dautović was the Chief of the Bugojno SJB during the relevant time (paragraph 233).

416. The Panel has also found that the Police Station (Precinct) of the Bugojno SJB was quartered in the Gymnasium building and that the guards were members of the Bugojno SJB.

417. As the Chief of Police, Senad Dautović was in charge of the premises and the activities on these premises. As such he must have been aware of the overcrowding and the detention conditions. The fact that Senad Dautović knew that the persons of Croat ethnicity were detained in the Gymnasium is corroborated by his own letter, dated 14 October 1993, relinquishing the use of the building for this purpose.⁵⁷¹ This exhibit shows clearly that Senad Dautović was aware that the Gymnasium premises were not used as classrooms, but rather had been reassigned to meet his needs as Chief of Police. A number of witnesses confirmed that Dautović was the Chief of the Bugojno SJB.

⁵⁷¹ See T-194 (Letter of the Bugojno Municipal Command Staff dated 12 October 1993).

418. The Panel has partly changed the account of facts in the Indictment by omitting from this count the part pertaining to the Accused's participation in a JCE as the Commander of the Unified Command of the Army of RBiH, as the evidence does not support such a charge.

419. Taking into account the short distance between the relevant locations in the town of Bugojno, the fact that Senad Dautović was the Chief of Police in the town of Bugojno during the conflict, the fact that he was aware (due to the surrender) that there were many detained persons of Croat ethnicity in the town, and the fact that as a member of the Wartime Presidency he knew of the reallocation of buildings, the Panel finds that the Accused Dautović had knowledge that persons of Croat ethnicity were detained in the Gymnasium.

420. As the Chief of the Bugojno SJB, Senad Dautović was aware of the detainees held on the premises of the Gymnasium and received daily incident reports from his subordinates.⁵⁷² Based on the above, the Panel finds that Senad Dautović was aware of the limits of the Gymnasium and the fact that it was ill-suited to the purpose of detaining a large number of individuals.

⁵⁷² See T-194 (Letter of the Bugojno Municipal Command Staff dated 12 October 1993).

3. General Factual Findings

(a) During the latter half of July 1993, on approximately 23 July 1993, members of the Police Station Centar - Bugojno SJB and other members of the Bugojno SJB, including the Deputy of the Commander of the Police Station Centar Besim Hodžić a.k.a Besko, Nijaz Bevrnja, whose direct superior at that point in time was Senad Dautović, formed a gauntlet in the hall of the Gymnasium in such a way that they lined up on both sides at the entrance into the Gymnasium building to the entrance into the basement of the Gymnasium, leaving a passage in between, and ordered Gordan Raić to start walking through the passage, which Gordan Raić did. Then they started kicking Gordan Raić, punching him, striking him with rifle butts and with different objects all over his body, thus inflicting serious physical and mental suffering and injury on him. Due to those blows Gordan Raić kept falling down on the ground, but they ordered Gordan Raić to stand up and move on towards the basement, which Gordan Raić did, and in doing so they continued striking Gordan Raić, and at one moment, due to the great number of blows received, he lost his consciousness, but they recovered Gordan Raić and pushed him down the stairs into the basement of the Gymnasium, and thus they detained Gordan Raić with visible injuries all over his body with the other detainees of Croat ethnicity who had already been detained there

421. The Panel finds that during the latter half of July 1993, on approximately 23 July 1993, members of the Police Station Centar - Bugojno SJB and other members of the Bugojno SJB, including the Deputy Commander of the Police Station Centar Besim Hodžić (a.k.a Besko), Nijaz Bevrnja, whose direct superior at that point in time was Senad Dautović, formed a gauntlet in the hall of the Gymnasium in such a way that they lined up on both sides at the entrance into the Gymnasium building to the entrance into the basement of the Gymnasium, leaving a passage in between, and ordered Gordan Raić to start walking through the passage, which Gordan Raić did. Then they started kicking Gordan Raić, punching him, striking him with rifle butts and with different objects all over his body, thus inflicting serious physical and mental suffering and injury on him. Due to those blows Gordan Raić kept falling down on the ground, but they ordered Gordan Raić to stand up and move on towards the basement, which Gordan Raić did, and in doing so they continued striking Gordan Raić, and at one moment, due to the great number of blows received, he lost his consciousness, but they recovered Gordan Raić and pushed him down the stairs into

the basement of the Gymnasium, and thus they detained Gordan Raić with visible injuries all over his body with the other detainees of Croat ethnicity who had already been detained there.

422. The Panel is satisfied that the Prosecution has proved beyond a reasonable doubt that in the latter half of July, around 23 July 1993, witness Gordan Raić was guarding the Ljubljanska Bank when the conflict began. He tried to escape from the shooting but was captured and detained. He was held by the police behind a market for over an hour. He was then taken by the brigade police to the Gymnasium. Raić stated that on 23 July 1993 he was arrested by “Nijaz Bevrnja's and Besko's police”.⁵⁷³ The Panel has explained in the previous section that Besim Hodžić was the Deputy Commander of the Police Station (Precinct) which was based in the Gymnasium (paragraphs 398 – 406).

423. According to the testimony of Gordan Raić, a gauntlet was formed upon his entry in the Gymnasium. He stated that the police were in the Gymnasium, that he recognized Nijaz Bevrnja and that he would “always be able to recognize him as long as he lives”.⁵⁷⁴ Nijaz Bevrnja was waiting for him there and, along with others, beat him. He was all covered in bruises from the beating. Once he entered the gauntlet, which was comprised of about 30 persons, the beating started. He still has a scar from the injury inflicted by the rifle stock used to beat him on that occasion.⁵⁷⁵

424. Raić stated that he was beaten until he fell down and that he was knocked unconscious. The witness regained his consciousness in the Gymnasium basement. When he woke up he did not recognize anyone except for witness B, who massaged him and allowed him to rest his head on his lap. The witness further stated that he was handcuffed for three days in the Gymnasium basement.⁵⁷⁶

425. Witness Rade Marijanović corroborated this testimony. He confirmed that he remembered when Nijaz Bevrnja stomped on Gordan Raić.⁵⁷⁷ Witness Berislav

⁵⁷³ Gordan Raić (13 February 2008).

⁵⁷⁴ Gordan Raić (13 February 2008).

⁵⁷⁵ Gordan Raić (13 February 2008).

⁵⁷⁶ Gordan Raić (13 December 2008).

⁵⁷⁷ Rade Marijanović (11 March 2009).

Džalto confirmed that he saw Gordan Radić in a beaten up state.⁵⁷⁸ Witness B confirmed that Gordan Raić had been severely beaten and that he had allowed Raić to rest his head on his lap.⁵⁷⁹

426. The Panel finds that these beatings inflicted serious mental and physical injury upon Gordan Raić.

(b) During the same period and in the same place as in the previous section, members of the Police Station Centar – Bugojno SJB and other members of the Bugojno SJB, whose direct superior at that point in time was Senad Dautović, took Gordan Raić out of the basement where he was detained and brought him to the gym of the Gymnasium where several members of the Police Station Centar kicked Gordan Raić, punched him, and hit him with billiard cues all over his body. Due to those blows, Gordan Raić kept falling on the floor and thus sustained serious physical and mental suffering and injury; thereupon, they poured petrol on Gordan Raić and wanted to set him on fire, in which manner they inflicted on him serious mental pain and suffering. Thereafter, they detained Gordan Raić with visible injuries all over his body in the basement of the Gymnasium

427. The Panel finds that during the same period and in the same place as in the previous section, members of the Police Station Centar – the Bugojno SJB and other members of the Bugojno SJB, whose direct superior at that point in time was Senad Dautović, took Gordan Raić out of the basement where he was detained and brought him to the gym of the Gymnasium where several members of the Police Station Centar kicked Gordan Raić, punched him, and hit him with billiard cues all over his body. Due to those blows, Gordan Raić kept falling on the floor and thus sustained serious physical and mental suffering and injury; thereupon, they poured petrol on Gordan Raić and wanted to set him on fire, in which manner they inflicted on him serious mental pain and suffering. Thereafter, they detained Gordan Raić with visible injuries all over his body in the basement of the Gymnasium.

428. The Panel is satisfied that the Prosecution has proved beyond a reasonable doubt that the police officers who were standing guard during the mentioned period removed Gordan Raić from the basement of the Gymnasium and brought him

⁵⁷⁸ Berislav Džalto (25 June 2008).

upstairs into the gym. The witness stated that he was alone in the gym when they beat him. The police guards beat him with a billiard cue, punched and kicked him.⁵⁸⁰ Raić believed that there were 15 police officers involved. When one guard began to pour petrol on him in order to set him on fire, another guard yelled and prevented this from happening. He was then returned to the basement of the Gymnasium.⁵⁸¹

429. Despite the lack of corroborating evidence, the Panel has no reason to doubt the veracity of Gordan Raić's testimony. His testimony is logical and the Defense did not challenge his testimony in the course of the main trial. The Panel concludes that Gordan Raić suffered serious physical and mental injury as a result of this conduct. This conduct is accordingly considered cruel and inhuman treatment.

(c) On 23 July 1993, members of the Police Station Centar - Bugojno SJB and other members of the Bugojno SJB, formed a gauntlet in the hall of the Gymnasium in such a way that they lined up on both sides of the entrance into the Gymnasium building to the entrance into the Gymnasium basement, leaving a passage in between. They ordered the civilian - witness B to start moving through that passage, which the witness B did. Then they started kicking witness B, punching him, striking him with rifle butts and different objects all over his body, and due to those blows witness B's right clavicle broke and his right kidney was injured, in which manner they inflicted upon witness B serious mental and physical suffering and injury. Thereupon, they pushed witness B down the stairs into the Gymnasium basement and thus detained witness B with the other detainees of Croat ethnicity who had already been detained there

430. The Panel finds that on 23 July 1993, members of the Police Station Centar - Bugojno SJB and other members of the Bugojno SJB, formed a gauntlet in the hall of the Gymnasium in such a way that they lined up on both sides of the entrance into the Gymnasium building to the entrance into the Gymnasium basement, leaving a passage in between. They ordered the civilian - witness B to start moving through that passage, which the witness B did. Then they started kicking witness B, punching him, striking him with rifle butts and different objects all over his body, and due to those blows witness B's right clavicle broke and his right kidney was injured, in

⁵⁷⁹ Witness B (26 November 2008).

⁵⁸⁰ Gordan Raić (13 February 2008).

which manner they inflicted upon witness B serious mental and physical suffering and injury. Thereupon, they pushed witness B down the stairs into the Gymnasium basement and thus detained witness B with the other detainees of Croat ethnicity who had already been detained there,

431. The Panel is satisfied that the Prosecution has proved beyond a reasonable doubt that on 23 July 1993 witness B was arrested and taken to the basement of the Gymnasium. In his testimony, witness B stated that he was arrested in his apartment and taken to the Gymnasium. Upon his arrival at the Gymnasium, the soldiers were standing on both sides and he had to walk past them. “They beat me with whatever they could lay their hands on, rifle stocks, kicks and punches, all kinds of things”.⁵⁸² He also stated that his right kidney was injured during the beating and that his right clavicle was fractured, that he fell unconscious and that he was carried down to the basement of the Gymnasium. The witness also stated that at the time when he was beaten while entering the Gymnasium persons of Croat ethnicity had already been detained in the basement of the Gymnasium.

432. Gordan Raić confirmed that witness B was detained in the basement.⁵⁸³ No evidence was submitted to dispute the testimony of witness B.

433. The Panel finds that the witness suffered severe physical and mental injury as a result of the described actions.

⁵⁸¹ Gordan Raić (13 February 2008).

⁵⁸² Witness B (26 November 2008).

⁵⁸³ Gordan Raić (13 February 2008).

(d) In late July 1993, after 18 July 1993, members of the Police Station Centar - SJB Bugojno and other members of the SJB Bugojno locked up Stjepan Cvijanović in the basement of the Police Station Centar at the Gymnasium in Bugojno, and on that same day members of the SJB Bugojno wearing hoods on their heads came down to the basement where Stjepan Cvijanović was detained and beat him, which caused him to faint thus inflicting on him serious mental and physical suffering and injury, and regain his consciousness only the next day in the hospital bed of the Health Center in Bugojno, which is across the street from the Bugojno SJB

434. The Panel finds that in late July 1993, after 18 July 1993, members of the Police Station Centar - SJB Bugojno and other members of the SJB Bugojno locked up Stjepan Cvijanović in the basement of the Police Station Centar at the Gymnasium in Bugojno, and on that same day members of the SJB Bugojno wearing hoods on their heads came down to the basement where Stjepan Cvijanović was detained and beat him, which caused him to faint thus inflicting on him serious mental and physical suffering and injury, and regain his consciousness only the next day in the hospital bed of the Health Center in Bugojno, which is across the street from the Bugojno SJB.

435. The Panel is satisfied that the Prosecution has proved beyond a reasonable doubt that Stjepan Cvijanović was taken to the Gymnasium in late July 1993. Cvijanović stated that he was a member of the labor detail before the conflict, that he loaded and unloaded cargo, that he was a volunteer with the Croat Defense Council (HVO) and that he stayed at home when the conflict started. He was arrested in a “cafe bar” and taken to the Gymnasium. He was told by the persons who detained him that he would be taken to the MUP to give a statement.⁵⁸⁴ The witness was beaten immediately upon his arrival at the Gymnasium. He did not recognize the persons who beat him and he did not know why he was beaten.⁵⁸⁵ According to his testimony, he spent the night there and the following day underwent an operation at the hospital for the injuries he sustained during the beating. He was told by the doctor who operated on him that he was brought in by two soldiers. When he was taken to the hospital, or more specifically, when he regained consciousness, he saw

⁵⁸⁴ Stjepan Cvijanović (11 March 2009).

that his body was swollen and covered in bruises. He stated that he underwent a lengthy medical treatment at the Health Center which lasted for approximately two months.

436. Witness Milenko Kasalo, who also underwent medical treatment at the Health Center, stated that he shared a room in the hospital with an elderly man they called Stipe.⁵⁸⁶ Taking into account the period when these events occurred and the fact that witness Cvijanović was born in 1941, the Panel concludes that this man was Stjepan Cvijanović.

437. The Panel notes that it has omitted the part of the count pertaining to the beating of witness Cvijanović at the Health Center because no evidence was tendered in that regard. The Panel did not render an acquittal with respect to this part of the count because it was not a separate count in the Indictment.

(e) In the period from 18 July 1993 until 8 October 1993, members of the Police Station Centar - SJB Bugojno and other members of the SJB Bugojno were taking the detainees of Croat ethnicity, who were detained on the premises of the Police Station Centar in the Gymnasium in Bugojno upon the approval of Senad Dautović, to the ground floor or other places in the Gymnasium where they punched and kicked them, beat them with clubs and other objects all over their bodies, as a result of which the detainees sustained visible injuries which caused them serious mental and physical suffering, with the following detainees beaten in this way: Josip Škaro, Mario Subašić, Vinko Ivković, Mijo Marijanović and other detainees

438. The Panel finds that in the period from 18 July 1993 until 8 October 1993, members of the Police Station Centar - SJB Bugojno and other members of the SJB Bugojno were taking the detainees of Croat ethnicity, who were detained on the premises of the Police Station Centar in the Gymnasium in Bugojno upon the approval of Senad Dautović, to the ground floor or other places in the Gymnasium where they punched and kicked them, beat them with clubs and other objects all over their bodies, as a result of which the detainees sustained visible injuries which caused them serious mental and physical suffering, with the following detainees

⁵⁸⁵ Stjepan Cvijanović (11 March 2009).

beaten in this way: Josip Škaro, Mario Subašić, Vinko Ivković, Mijo Marijanović and other detainees.

439. The Panel is satisfied that the Prosecution has proved beyond a reasonable doubt that the detainees of Croat ethnicity held in the Gymnasium were beaten in the Police Station (Precinct) at the Bugojno SJB by the members of the Bugojno SJB. The Panel has modified the factual description in this count of the Indictment so that it is consistent with the adduced evidence.

440. Witness Dragan Nevjestić stated that he was ill-treated by persons under the command of Nijaz Bevrnja. The Panel has already established that Nijaz Bevrnja was a member of the Bugojno SJB (paragraphs 403 - 404). Damir Kolovrat, Dragan Kasalo, witness B and Ivo Mršo stated that the detainees were tortured and that ill-treatment took place in the gym. Witness B also stated that during the beatings the guards wore hoods on their heads. Witness Ivo Mršo stated that they heard the groans of people who were being abused.

441. Witness Ivica Klarić stated that Josip Škaro was beaten and did not receive any medical assistance.⁵⁸⁷ Kazimir Kaić stated in his testimony that he knew Josip Škaro but could not recognize him because of the bruises he had sustained during the beating.⁵⁸⁸ Witness Frano Vejić also stated that Josip Škaro was beaten immediately upon his arrival at the Gymnasium.

442. Witnesses Berislav Džalto, witness B, witness D and Željko Lozić also testified that Mario Subašić and Vinko Ivković were taken for interrogation and beaten. Witness Lozić gave a detailed description of how Mario Subašić was beaten.⁵⁸⁹ Mijo Marijanović said in his statement to the ICTY investigators (exhibit T-132) that he was beaten during his detention at the Gymnasium.⁵⁹⁰

⁵⁸⁶ Milenko Kasalo (20 March 2008).

⁵⁸⁷ Ivica Klarić (27 February 2008).

⁵⁸⁸ Kazimir Kaić (8 April 2009).

⁵⁸⁹ Željko Lozić (6 May 2009).

⁵⁹⁰ T-132 (Record of examination of witness Mijo Marijanović).

4. Acts of Senad Dautović

(a) while Senad Dautović, as the Chief of SJB Bugojno, had reason to know that the detainees incarcerated at the Police Station Centar Bugojno in the Gymnasium were abused, by his failure to act, that is, by failing to take reasonable and necessary measures to prevent the abuse of detainees as indicated above, or to punish those who abused the detainees who were his subordinates at the time and over whom he had effective control

443. The Panel finds that Senad Dautović, as the Chief of SJB Bugojno, had reason to know that the detainees incarcerated at the Police Station Centar Bugojno in the Gymnasium were abused, by his failure to act, that is, by failing to take reasonable and necessary measures to prevent the abuse of detainees in the manner described above, or to punish those who abused them and who were his subordinates at the time and over whom he had effective control.

444. The Panel is satisfied that the Prosecution has proved beyond a reasonable doubt that the Accused Senad Dautović was the Chief of the Bugojno SJB at the relevant time, as explained in previous paragraph 233.

445. The Panel has also found that Senad Dautović knew that the Gymnasium premises were not being used as classrooms (paragraph 411).

446. The Panel finds that Senad Dautović was aware that the detainees from the Gymnasium, which was used by the Police Station (Precinct), were taken to the Bugojno SJB and returned to the Gymnasium. It is also undisputed that these two facilities were in the vicinity of one another.

447. Considering the events which took place at that time in Bugojno, the Panel concludes that Senad Dautović had reason to know that the detainees of Croat ethnicity were at risk of being ill-treated. Dautović had been monitoring the ethnic tensions since the beginning of 1993. He was aware of the events leading up to the conflict.

448. The Panel concludes that Senad Dautović failed to take necessary and reasonable measures to prevent detainee abuse. Although in his capacity as the Chief of the SJB, he could have taken numerous measures to prevent the abuse, the

adduced evidence does not indicate that he took any such measures. There is no evidence of any instructions being given regarding the proper treatment of detainees, nor of any review mechanisms being put in place to supervise and constrain the interactions between his staff and detainees. No steps were taken to relieve the overcrowding. The Defense did not tender any evidence in this regard, besides arguing that the military police were quartered in the Gymnasium.

449. The Panel finds that Senad Dautović exercised effective control over the guards in the Gymnasium building. Dautović was Chief of the Bugojno SJB; he exercised his authority in the Gymnasium and the Commander in the Gymnasium was subordinated to him.

450. The Panel changed the Indictment by omitting from this count the part pertaining to the Accused's liability in the JCE as the Commander of the Unified Command of the Army of RBiH and by omitting the word "knowingly".

451. There is no question that Dautović had the capacity to and was aware of the need to control his subordinates. He was a leader and had served in a leadership capacity before the war. In the build up to the conflict he was well respected by both groups. Witnesses testified that Dautović had used his leadership skills to try and stop the conflict. He also was aware of the ethnic tensions that existed in the community immediately following the conflict. One witness testified how, after the surrender, Dautović had tried to control and rebuke a jeering crowd.⁵⁹¹ Dautović remained silent, however, with regard to the conduct of his own men. No evidence was adduced to the effect that the Accused initiated any disciplinary measures in response to the gauntlet beatings or ill treatment of the detainees. Dautović had the duty to ensure the safety of the detainees in his care, and once he was made aware of abuses, he had the duty to take reasonable measures to punish them. Dautović failed in these duties.

⁵⁹¹ Miroslav Zelić (20 February 2008).

5. General Factual Findings

(a) In early August 1993, members of the Police Station Centar - SJB Bugojno took out from the basement of the Gymnasium detainees Josip Ćubela, Jozo Andžić, Drago Hrnkaš and Ivica Đikić, who were detained there under Senad Dautović's approval, whereupon they were taken to one of the rooms in the Gymnasium where they were tied with police handcuffs to the tables and radiators and kept there for around three days without adequate food, during which time they repeatedly abused them physically and mentally on a daily basis, forced them to sing songs, threatened to kill them, punched and kicked them and beat them with clubs all over their bodies thus inflicting on them serious mental and physical suffering; after three days detainees Josip Ćubela and Jozo Andžić managed to take off the handcuffs and escape, while Drago Hrnkaš and Ivica Đikić could not and did not dare to escape and, after a while, they informed members of the Police Station Centar - SJB Bugojno of Josip Ćubela and Jozo Andžić's escape, whereupon out of frustration and being convinced that someone helped the detainees to escape, members of PS Centar - SJB Bugojno tortured Drago Hrnkaš and Ivica Đikić all the while asking them to reveal who from the ranks of the Police Station Centar helped Josip Ćubela and Jozo Andžić in their escape, which they were unable to tell them

452. The Panel finds that in early August 1993, members of the Police Station Centar - SJB Bugojno took out from the basement of the Gymnasium detainees Josip Ćubela, Jozo Andžić, Drago Hrnkaš and Ivica Đikić, who were detained there under Senad Dautović's approval, whereupon they were taken to one of the rooms in the Gymnasium where they were tied with police handcuffs to the tables and radiators and kept there for around three days without adequate food, during which time they repeatedly abused them physically and mentally on a daily basis, forced them to sing songs, threatened to kill them, punched and kicked them and beat them with clubs all over their bodies thus inflicting on them serious mental and physical suffering; after three days detainees Josip Ćubela and Jozo Andžić managed to take off the handcuffs and escape, while Drago Hrnkaš and Ivica Đikić could not and did not dare to escape and, after a while, they informed members of the Police Station Centar - SJB Bugojno of Josip Ćubela and Jozo Andžić's escape, whereupon out of frustration and being convinced that someone helped the detainees to escape, members of the PS Centar - SJB Bugojno tortured Drago Hrnkaš and Ivica Đikić all

the while asking them to reveal who from the ranks of the Police Station Centar helped Josip Čubela and Jozo Andžić in their escape, which they were unable to tell them.

453. The Panel is satisfied that the Prosecution has proved beyond a reasonable doubt that members of the Police Station (Precinct) of the SJB Bugojno, in early August 1993, removed the detainees Josip Čubela, Jozo Andžić, Drago Hrnkaš and Ivica Đikić from the basement of the Gymnasium. The Panel has already explained that the persons of Croat ethnicity were detained in the basement of the Gymnasium during the mentioned period.

454. Exhibit T-570 (Daily bulletin of the Public Security Station dated 4 August 1993) indicates that Josip Čubela and Jozo Andžić escaped from the prison in the Gymnasium on 4 August 1993, while exhibit T-571 (Daily bulletin of the Public Security Station dated 5 August 1993) shows that a search party was sent after the fugitives.⁵⁹²

455. Witness Ivica Đikić stated in his testimony that Nijaz Bevrnja called him, Josip Čubela, Drago Hrnkaš and Jozo Andžić, and took them to a separate room in the Gymnasium where they were handcuffed to the radiator. The witness further stated that they were beaten and forced to sing songs. Witness Josip Čubela stated that they were handcuffed for three days.

456. Three days later, Josip Čubela and Jozo Andžić took off the handcuffs and escaped. They had wanted to help Ivica Đikić and Drago Hrnkaš escape with them, but Drago Hrnkaš' health problems and Ivica Đikić's concern for the safety of his family in Bugojno prevented them from leaving.⁵⁹³

457. Members of the Bugojno SJB were angered by Josip Čubela's and Jozo Andžić's escape, and beat Drago Hrnkaš and Ivica Đikić again, asking them to reveal which one of the members of the Bugojno SJB aided the escapees. Ivica Đikić

⁵⁹² T-571 (Daily bulletin of the Public Security Station dated 5 August 1993; T-570 (Daily bulletin of the Public Security Station dated 4 August 1993).

⁵⁹³ Ivica Đikić (17 December 2008).

stated that they were beaten so severely that he “thought about lying about someone helping him, only to make them stop”.⁵⁹⁴

458. Nevzudin Kero, Semir Osmić, Ivo Mršo, Bernes Gavranović, Marko Gunjača and witness B stated that they were aware of Josip Ćubela's and Jozo Andžić's escape from the Gymnasium.

6. Acts of Senad Dautović

(a) while Senad Dautović, as the Chief of SJB Bugojno, had reason to know that the detainees detained at the Police Station Centar Bugojno in the Gymnasium in Bugojno were tortured and abused, knew that Josip Ćubela and Jozo Andžić escaped from the premises of the Gymnasium where they had been detained under his approval, which he reported to the Bugojno Municipality Wartime Presidency, by his failure to act, that is, by failing to take reasonable and necessary measures to prevent the torture and abuse of detainees, which in view of the position he held he was obliged to do, and by failing to take reasonable and necessary measures to prevent the torture and abuse of detainees, as described above, or to punish those responsible for the torture and inhuman treatment who were his subordinates at the time and over whom he had effective control

459. The Panel finds that Senad Dautović, as the Chief of SJB Bugojno, had reason to know that the detainees detained at the Police Station Centar Bugojno in the Gymnasium in Bugojno were tortured and abused, knew that Josip Ćubela and Jozo Andžić escaped from the premises of the Gymnasium where they had been detained under his approval, which he reported to the Bugojno Municipality Wartime Presidency, by his failure to act, that is, by failing to take reasonable and necessary measures to prevent the torture and abuse of detainees, which in view of the position he held he was obliged to do, and by failing to take reasonable and necessary measures to prevent the torture and abuse of detainees, as described above, or to punish those responsible for the torture and inhuman treatment who were his subordinates at the time and over whom he had effective control.

⁵⁹⁴ Ivica Đikić (17 December 2008).

460. The prosecution has shown that Senad Dautović reported about the escape during the session of the Wartime Presidency on 4 August 1993. Dautović was aware of the events that took place. While there is no evidence that he ordered the interrogation and the subsequent beatings, there is also no evidence that he tried to stop it or punish the conduct of his subordinates.

461. The rooms in the Gymnasium were under the control of Dautović. It was his duty to keep the detainees safe. The type of treatment testified to, which went on for days, could not be hidden. Threats to kill and beatings are considered cruel and inhuman treatment. Being forced to sing while chained to a radiator is cruel and inhuman treatment.

462. The interrogation and the beatings that followed the escape were intended to obtain information. This fact transforms otherwise cruel and inhuman treatment into torture. In this case, the torture went on for days.

463. There is no evidence that Dautović instituted any disciplinary proceedings in response to these actions.

E. IN THE BUGOJNO FC ISKRA STADIUM CAMP

1. General factual findings

(a) During the period from the establishment of the FC *Iskra* Stadium Camp in August 1993, which was set up under the Decision of the Bugojno Municipality Wartime Presidency and where over 300 men of Croat ethnicity had been detained, until 19 March 1994, and after the arrival of Nisvet Gasal as the camp warden, in the period from 22 September 1993 to 19 March 1994, who was responsible for the camp's operation, a large number of detainees were subjected to inhuman treatment by being taken away from the FC *Iskra* stadium camp to perform forced labor, with the knowledge of Nisvet Gasal, although he knew and was aware that such acts against detainees were prohibited and that they might be wounded while performing labor whereupon detainees were taken to the front lines between the Army of RBiH and the Army of Republika Srpska (VRS) and the HVO in the areas of Donji Vakuf, Gornji Vakuf/Uskoplje, Kupres and other places where they dug trenches, communication trenches and dugouts and where very often there were skirmishes involving the use of firearms, which resulted in injuries to a number of detainees, Miroslav Zelić being one of them, and upon his return to the camp he did not receive sufficient and adequate medical help

464. The Panel found that during the period from the establishment of the FC *Iskra* Stadium Camp in August 1993, which was set up under the Decision of the Bugojno Municipality Wartime Presidency and where over 300 men of Croat ethnicity had been detained, until 19 March 1994, and after the arrival of Nisvet Gasal as the camp warden, in the period from 22 September 1993 to 19 March 1994, who was responsible for the camp's operation, a large number of detainees were subjected to inhuman treatment by being taken away from the FC *Iskra* stadium camp to perform forced labor, with the knowledge of Nisvet Gasal, although he knew and was aware that such acts against detainees were prohibited and that they might be wounded while performing labor whereupon detainees were taken to the front lines between the Army of RBiH and the Army of Republika Srpska (VRS) and the HVO in the areas of Donji Vakuf, Gornji Vakuf/Uskoplje, Kupres and other places where they dug trenches, communication trenches and dugouts and where very often there were skirmishes involving the use of firearms, which resulted in injuries to a number of

detainees, Miroslav Zelić being one of them, and upon his return to the camp he did not receive sufficient and adequate medical help. This finding ensues from ample documentary and testimonial evidence produced at the trial.

465. It is clear that the FC *Iskra* stadium camp was set up under the decision of the Wartime Presidency. This fact is corroborated by a large amount of evidence. First, the Wartime Presidency, by its Decision No. 01-124-86/93 of 24 August 1993, announced that the premises under the stands of the FC *Iskra* stadium were to be used for the detention of civilians and military persons until the road to the Zenica correctional facility (KP Zenica) and to the military prison in Travnik was made passable.⁵⁹⁵ Dževad Mlaćo, President of the Bugojno Municipality Wartime Presidency, testified that the Wartime Presidency had made the decision as to its use, although he never stated the date when the decision was made.⁵⁹⁶

466. The Panel determined, based on the evidence, that the premises of the FC *Iskra* stadium had been used as a holding facility prior to 24 August 1993. As early as 1 July 1993, the Executive Board of the Bugojno Municipality Wartime Presidency recommended that the premises of the FC *Iskra* stadium be designated for that purpose.⁵⁹⁷ This follows from exhibit T-177 (Bugojno Municipality Wartime Presidency Decision No. 01-V-22/93 dated 28 July 1993) which appointed Mehmed Sadiković the warden of the temporary prison facility in Bugojno.⁵⁹⁸ Exhibit T-640 (Dževad Mlaćo's journal) also reflects that the purpose of the prison and the appointment of its warden were discussed on 26 July 1993 at the 16th special session of the Bugojno Municipality Wartime Presidency.⁵⁹⁹

467. The testimony of several witnesses heard at the trial confirms that the premises were used for the detention of the surrendered persons of Croat ethnicity prior to 24 August 1993, the date on which the Wartime Presidency issued the decision designating the premises for that purpose. Witnesses Berislav Džalto, witness A, Josip Kalajica, Dragan Boškić, Mario Franjić, Mario Glišić, Željko Ištuk,

⁵⁹⁵ O-16/II (Decision of the Bugojno Municipality Wartime Presidency No. 01-124-86/93 dated 24 August 1993).

⁵⁹⁶ Witness Dževad Mlaćo (24 March 2010).

⁵⁹⁷ T-178 (Draft Decision of the Executive Board of the Bugojno Municipality Wartime Presidency).

⁵⁹⁸ T-177 (Decision of the Bugojno Municipality Wartime Presidency No. 01-V-22/93 dated 28 July 1993).

⁵⁹⁹ T-640 (Dževad Mlaćo's Journal, entry of 26 July 1993).

witness D and Božo Križanac clearly and unambiguously asserted that they had been brought in and detained at the *Iskra* stadium camp in early or mid-August 1993.

468. Consequently, the Panel determined that the FC *Iskra* stadium was established by the decision of the Bugojno Municipality Wartime Presidency in early August 1993. The first group of surrendered persons of Croat ethnicity was detained on the premises of this facility in early August 1993.

469. The Panel finds that the detainees of Croat ethnicity were exchanged on 19 March 1994. This fact was undisputed by the Defense. Živko Ljuban, Vlatko Brnas, Dražen Vučak, Stipo Vučak, Berislav Džalto and many others corroborated this fact in their testimony. The 18 March 1993 Instruction of the Operations Group West /OG West/ Security Service addressed to the Security Sector of the 3rd Corps Command states that an exchange of the HVO and ARBiH prisoners had been arranged.⁶⁰⁰ Likewise, the 19 March 1994 daily report of the OG West Military Police shows that the release of the prisoners of war from the Central prison was arranged for that day. Twenty military police officers were assigned to secure the exchange. The prisoners were handed over to the International Red Cross. The Accused, Nisvet Gasal, examined as a defense witness, also confirmed this fact.⁶⁰¹

470. The number of detainees held in the FC *Iskra* stadium camp varied over the period of their detention. According to the witnesses, at the very beginning the number of detainees exceeded 300.⁶⁰² Nisvet Gasal asserts that at the beginning there were about 350 detainees.⁶⁰³ However by 19 March 1994 (the day of the exchange) some detainees had been released,⁶⁰⁴ some individually had been exchanged,⁶⁰⁵ and some were missing,⁶⁰⁶ bringing the number of detainees down to 294. All of the detainees of Croat ethnicity were males.⁶⁰⁷

⁶⁰⁰ T-589 (Instruction of the OG West Security Service No. 03-1/144-1 dated 18 March 1993).

⁶⁰¹ Nisvet Gasal (17 February 2010).

⁶⁰² Vlatko Brnas (1 October 2008); Ivo Kujundžić (16 April 2008); Zijad Salkić (7 May 2008).

⁶⁰³ Nisvet Gasal (17 February 2010).

⁶⁰⁴ See e.g. Viktor Maros (17 December 2008); Stjepan Radoš (27 August 2008).

⁶⁰⁵ Milenko Begić (2 February 2008); Zdravko Kezić (2 July 2008).

⁶⁰⁶ See paragraphs 228 - 320.

⁶⁰⁷ T-590 (List of detainees of the OG West Command Security Service dated 24 February 1994); T-591 (List of detainees of the OG West Command Security Service No. 03-3/41-1 dated 23 January 1994).

471. The vast majority, if not all, of the detainees were engaged in fighting prior to surrender. While some had been civilians who were not militarily engaged before the conflict, it appears from the testimony that all had taken up arms and participated in the conflict. The Prosecution did not put forth any evidence to indicate otherwise.

472. During the trial, the Prosecution claimed that the Accused Nisvet Gasal had assumed the duty of FC *Iskra* stadium camp warden on 21 September 1993. The Defense for the Accused asserted that the Accused's assumption of the position took place a day or two before the first ICRC visit to the FC *Iskra* stadium camp on 28 September 1993.⁶⁰⁸

473. The Panel found that Nisvet Gasal assumed the position of FC *Iskra* stadium camp warden on 22 September 1993 based on his military documentation, whereby the Panel changed the factual description of the Indictment in this part.⁶⁰⁹

474. The witnesses examined in relation to these circumstances were unable to give an exact date on which the Accused Nisvet Gasal assumed the position of FC *Iskra* stadium camp warden. This is understandable given the length of time since the event. The Panel therefore relied on documentary evidence to reach its conclusion.

475. Nisvet Gasal's military service record shows that the Accused served in the MUP until 21 September 1993, and from that date until 1 April 1994 he was a member of the ARBiH.⁶¹⁰ The same dates are listed in Nisvet Gasal's master file.⁶¹¹ Likewise, exhibit T-553 (Bugojno SJB list no. 19-2/01-501/93 dated 30 September 1993 submitted to the Bugojno Municipality Defense Secretariat) shows that on 22 September 1993, Nisvet Gasal, Musajb Kukavica and Besim Cetin were temporarily reassigned to the 'prison'.⁶¹² Bearing in mind the fact that the date of 22 September 1993 is in any case favorable for the first-Accused, the Panel has accepted this date as the date on which the Accused commenced his temporary

⁶⁰⁸ T-20 (ICRC certificate dated 28 September 1993 for Ivan Kapetanović); T-33 (ICRC certificate dated 28 September 1993 for Ivo Kujundžić and others).

⁶⁰⁹ Prosecution Amended Indictment dated 29 June 2010.

⁶¹⁰ T-526 (military service record issued in the name of Nisvet Gasal).

⁶¹¹ T-535 (master file in the name of Nisvet Gasal).

⁶¹² The term that was used at the time for the FC *Iskra* stadium camp.

reassignment to the FC *Iskra* stadium camp and/or the date he assumed the duties of FC *Iskra* stadium camp warden.

476. The Accused Nisvet Gasal testified that he discharged this duty also on 19 March 1994, when the detainees were exchanged. The Panel considers it unnecessary to consider this fact further.⁶¹³

477. Prior to the Accused Nisvet Gasal assuming his duties, detainees were taken away from the FC *Iskra* stadium camp to various locations to perform forced labor. As he was not present or responsible for acts that took place prior to 22 September 1993, the Panel exercised special caution in evaluating the evidence presented in this count.

478. Some witnesses who were examined about the underlying circumstances were unable to state the exact time they were taken to perform forced labor. Therefore the Panel primarily evaluated the evidence of the witnesses who were brought from the Gymnasium to the FC *Iskra* stadium camp in early October 1993. It is clear that the Accused was the FC *Iskra* stadium camp warden at this time.

479. Approximately 30 to 40 members of the HZ HB MUP were detained in the Gymnasium. In early October, the whole group was transferred to the FC *Iskra* stadium camp. Miroslav Zelić, a member of the HZ HB special unit, clearly stated this fact, pointing out that the members of the HZ HB MUP, including the special unit of which he was a member, were called out from the furniture showroom where they were taken after the surrender and then transferred to the premises of the Gymnasium. They were all detained there until October when they were taken to the FC *Iskra* stadium camp.⁶¹⁴ Witness Halid Manjušak also stated that members of the HZ HB MUP were detained on the premises of the Gymnasium. He testified that Rade Marjanović was one of those detained.⁶¹⁵ Gordan Raić, a member of the HZ HB MUP, also gave an account of his detention in the Gymnasium stating that

⁶¹³ Nisvet Gasal (19 February 2010).

⁶¹⁴ Miroslav Zelić (20 February 2008).

⁶¹⁵ Halid Manjušak (19 May 2010).

mostly members of the HZ HB MUP were held. He added that he was taken to the FC *Iskra* stadium camp in early October 1993.⁶¹⁶

480. Rade Marjanović, a member of the HZ HB MUP, testified that he was originally detained at the furniture showroom where “all those who were members of the MUP, meaning this anti-terrorist group ATG and members of the pre-war police, were called out and transferred to the Gymnasium”.⁶¹⁷ The whole group was then transferred from the Gymnasium to the FC *Iskra* stadium camp when Nisvet Gasal was the camp warden.⁶¹⁸ Slaven Brajković stated that he was detained in the Gymnasium together with a group of 40 detainees (members of the MUP) but he claims to have been taken to the FC *Iskra* stadium camp in early September.⁶¹⁹ Bearing in mind that this witness’ testimony is consistent with the testimony of other witnesses, except with regard to the date of their transfer to the FC *Iskra* stadium camp, the Panel considers it reasonable to conclude that Slaven Brajković was also taken to the FC *Iskra* stadium camp in early October 1993.

481. Exhibit T-194 and T-194a (Bugojno SJB Information on the use of the facility No. 19-2/01-1-562/93 dated 12 October 1993) corroborates that a group of detainees were taken from the Gymnasium to the FC *Iskra* stadium camp in early October 1993.⁶²⁰

482. Berislav Jezidžić, who was taken from the Gymnasium to the FC *Iskra* stadium camp, asserted that he was then taken to dig trenches at the Hrasnica site. A guard read out a list of detainees designated for labor and he was escorted to that location by soldiers that he did not know. He performed labor for three days and then he was taken back to the FC *Iskra* stadium camp.⁶²¹ Given that Berislav Jezidžić dug trenches at this site, it can be clearly concluded that during the critical period, Hrasnica was located at the frontline between the ARBiH and the enemy side. This is corroborated by the testimony of witnesses B⁶²² and Ivo Kujundžić.⁶²³ Although

⁶¹⁶ Gordan Raić (13 February 2008).

⁶¹⁷ Rade Marjanović (11 March 2009).

⁶¹⁸ Rade Marjanović (11 March 2009).

⁶¹⁹ Slaven Brajković (3 September 2008).

⁶²⁰ T-194 and T-194a (Information on the use of the facility, Bugojno SJB No. 19-2/01-1-562/93 dated 12 October 1993).

⁶²¹ Berislav Jezidžić (21 January 2009).

⁶²² Witness B (26 November 2008).

Berislav Jezidžić asserted that he was taken from the Gymnasium to the FC *Iskra* stadium camp in mid-December 1993,⁶²⁴ the Panel, bearing in mind the testimony of the witnesses referred to in paragraphs 479 - 480 to the effect that they were brought to the FC *Iskra* stadium camp from the BH Bank in early October 1993, as well as exhibits T-194 and T-194a,⁶²⁵ concludes that the Prosecution has established beyond doubt that this person was also brought to the FC *Iskra* stadium camp in early October 1993, a time when the Accused was the camp warden (paragraph 475).

483. Miroslav Zelić, who was also brought from the Gymnasium to the FC *Iskra* stadium camp in October 1993, alleged that while he was detained in the camp, a member of the ARBiH came and read out his name, as well as the names of others, to perform labor on the frontline in the Uskoplje area. They were taken to the location in a wagon. They were accommodated in the primary school at Pajić Polje, and were taken out in groups to dig trenches, bunkers and communication trenches. They were guarded by members of the ARBiH deployed at the frontline. The witness pointed out that it was well-known that the combat activities were quite intense at the frontline between the ARBiH and the HVO in the Uskoplje area, with frequent clashes occurring and fire exchanged daily. On one occasion, a guard called Megi, who was a member of the ARBiH, took the witness, Nedeljko Progomejla and Ivica Menjak from the primary school to perform labor at the frontline. While there, the HVO mounted an attack against the ARBiH positions using heavy artillery and infantry fire. The guard told them he was taking them back to the primary school. On their way back, a mortar shell landed nearby, wounding the witness in his right leg, left arm and right side of his neck. The guard was also wounded. Nedeljko Progomejla and Ivica Menjak decided not to attempt to escape and to help the witness and the guard get medical attention. Nedeljko Progomejla and Ivica Menjak helped them reach the base of the ARBiH where they received medical care. From there he was taken to the Bugojno health center where Doctor Vujanac attended to him. Shortly thereafter, two members of the ARBiH Brigade Police (one of whom was Abdulah Duvnjak (aka

⁶²³ Ivo Kujundžić (16 April 2008).

⁶²⁴ Berislav Jezidžić (21 January 2009).

⁶²⁵ See paragraph 481.

Dudo)), came to the hospital. Although Doctor Vujanac insisted that Zelić stay to receive treatment, he was taken back to the FC *Iskra* stadium camp.⁶²⁶

484. The witness was taken to the Bugojno health center to have his wounds dressed on several subsequent occasions. However, inasmuch as Doctor Vujanac had thought it necessary that that witness remain in the Bugojno health center to receive more extensive treatment, the Panel found that Želić had not been provided with sufficient medical care. The Panel notes that he had to be taken repeatedly to the Bugojno health center to have his wounds dressed. This is corroborated by the health center's medical reports from the relevant period.⁶²⁷

485. Interestingly, Miroslav Zelić indicated that a few days after he was wounded, he was told the FC *Iskra* stadium camp warden, Nisvet Gasal, wanted to see him. On that occasion, Zelić told the Accused that he had been wounded while engaged in labor. Nisvet Gasal, aware at the time that the witness had rescued Megi, a member of the ARBiH, asked him if he wanted to be released home. The witness refused the offer out of fear that he would go "missing", like other persons who had been released from the camp around that time.⁶²⁸

486. Enver Halilović (aka Megi) a member of the 1st Battalion of the ARBiH 307th Motorized Brigade, confirms these events. He indicated that during the conflict in Bugojno he was deployed to Gornji Vakuf. Detainees of Croat ethnicity were brought to that location. Enver Halilović's task was to take the detainees accommodated in the primary school at Pajić Polje to make dugouts. On 22 October 1993 Halilović was assigned three detainees: Miroslav Želić, one Prgomelja and another. The witness escorted them to perform labor at a location 200-500 meters away from the frontline with the HVO. While there, shooting began and both he and Miroslav Želić were wounded during the retreat. The other two detainees took his gun, as he could not carry it, and brought Halilović and Zelić back to the primary school Pajić Polje. Although all three could have escaped, they were worried Halilović would not survive. As one of the detainees said, "this war isn't about us" and therefore it was important

⁶²⁶ Miroslav Zelić (20 February 2008).

⁶²⁷ T-5 (medical report of the Bugojno Health Center dated 23 October 1993); T-6 (medical report of the Bugojno Health Center dated 29 October 1993).

⁶²⁸ Miroslav Zelić (20 February 2008).

to save his life. Halilović was then taken to Bugojno for treatment and eventually to the Travnik hospital, where he stayed for over a month.⁶²⁹

487. Stjepan Radoš, Božo Križanac, Kazimir Kaić and Ivan Kapetanović also performed labor at this location. Stjepan Radoš pointed out that he was taken to perform labor at the frontline around Bugojno, where fire was exchanged at some points. He did not volunteer for the work.⁶³⁰ He saw the wounded Miroslav Zelić and his guard being carried away for medical help.

488. Božo Križanac stated that in the second half of October 1993 he was called out to perform labor by Musajb Kukavica. While some witnesses stated the guards called out their names, others stated members of the Army called out their names. All witnesses indicated that they were escorted out of the camp by members of the military and not the prison guards.

489. Križanac was taken in a group of twelve detainees to the area between Pajić Polje and Gornji Vakuf, the line of disengagement between the ARBiH and the HVO, where they were kept for seven days. He also corroborated that, while engaged in labor, there was an exchange of fire during which an ARBiH guard called Megijin and detainee Miroslav Zelić were wounded.⁶³¹

490. Kazimir Kaić stated that, after he was brought from the Gymnasium to the FC *Iskra* stadium camp in October, he was taken to perform labor. On one occasion, he was digging trenches and dugouts with six other detainees when they came under shell fire. He also confirmed that the detainee Miroslav Zelić and an ARBiH guard were wounded.⁶³² Ivan Kapetanović asserted that he too performed labor at Pajić Polje towards Gornji Vakuf when an ARBiH guard and Miroslav Zelić were wounded.

491. All of these witnesses were accommodated in the primary school at Pajić Polje, from where they were taken in groups of three or four to perform labor to dig trenches and dugouts in the immediate proximity of the lines of disengagement.⁶³³

⁶²⁹ Enver Halilović (10 February 2010).

⁶³⁰ Stjepan Radoš (27 August 2008).

⁶³¹ Božo Križanac (25 February 2009).

⁶³² Kazimir Kaić (8 April 2009).

⁶³³ Ivan Kapetanović (19 March 2008).

492. Witness B, who was also brought to the FC *Iskra* stadium camp in October 1993, pointed out that on 26 October 1993 he was taken to perform labor at Pajić Polje in a group of twelve persons. He confirmed that they were accommodated in the primary school at Pajić Polje, from where they were taken to the Duratbegović Dolac area. This area was on the frontline and they dug trenches and communication trenches. On one occasion they were taken to a clearing facing the HVO positions. The witness stated that while they were laboring, Robert, another detainee, showed him a hot bullet which he found in his immediate vicinity. Besides Robert, he also remembered Mile Behara, Berislav Džalto and Vučko being there. They were kept there three to four days and then returned to the stadium on 28 October 1993.⁶³⁴ Berislav Džalto confirmed that he had been taken to perform labor at Pajić Polje in October 1993. His testimony was consistent with that of witness B. He stated that they were kept there for four days and then taken back to the FC *Iskra* stadium camp.⁶³⁵

493. Ozren Gvozdrenović and Berislav Jezidžić, who testified that they were taken from the Gymnasium to the *Iskra* stadium camp in October, were consistent in their accounts that upon their arrival in the camp other detainees were taken to perform labor in the Gornji Vakuf area.⁶³⁶

494. Damir Kolovrat indicated that detainees were taken to various locations to perform labor, including chopping wood and digging trenches, while he was incarcerated in the FC *Iskra* stadium camp. In October 1993, the witness was taken in a group of ten persons to the place of Sabljari, Donji Vakuf frontline with the VRS positions.⁶³⁷ His group performed labor there for 40 days and then was returned to the stadium. They arrived in late November 1993, as the ICRC arrived to compile a list of detainees.⁶³⁸ The ICRC compiled the list of detainees in the FC *Iskra* stadium camp on 24 November 1993.⁶³⁹ The Defense for Nisvet Gasal acknowledged in their closing arguments that detainees were forced to labor in the Sabljari area between

⁶³⁴ Witness B (26 November 2008).

⁶³⁵ Witness B (26 November 2008).

⁶³⁶ Ozren Gvozdrenović (10 December 2008); Berislav Jezidžić (21 January 2009)

⁶³⁷ Viktor Maros (17 December 2008).

⁶³⁸ Damir Kolovrat (4 March 2009).

⁶³⁹ T-107 (Certificate of the International Red Cross dated 14 November 1993 in the name of Damir Grgić); T-303 (Certificate of the International Red Cross dated 14 November 1993 in the name of Stipan Maros and others).

28 September 1993 and 14 October 1993, a time when Nisvet Gasal clearly performed the duty of the FC *Iskra* stadium camp warden.⁶⁴⁰ The Panel is, however, convinced that the October - November timeline of the witness is more accurate, as it is consistent with other testimony.

495. Vlatko Brnas pointed out that he was taken to perform labor on several occasions and at several different locations during his incarceration in the FC *Iskra* stadium camp. Detainees dug trenches, dugouts, communication trenches, carried logs and performed other similar work. He received a calendar from the ICRC during their visit to the camp. He recorded in the calendar a total of 121 days when he was taken for labor.⁶⁴¹ The last day he was assigned to labor during his detention in the FC *Iskra* stadium camp was about 15 December 1993. There was a lot of snow and the labor was performed in the area of Pajić Polje. On that occasion, he was taken by the military police from Donji Vakuf to Pajić Polje with a group of 15 detainees.⁶⁴² This witness' account was corroborated by the testimony of Dragan Boškić, who asserted that even after his return from the labor detail in the Gornji Vakuf area on 5 December 1993, the detainees from the FC *Iskra* stadium camp continued to be taken to perform forced labor.⁶⁴³ Dragan Boškić testified that some detainees were taken to the frontline in the area above the village of Pajić Polje towards Gornji Vakuf during the period of a heavy snow.⁶⁴⁴ Witness Rade Marjanović also corroborated this, indicating that in winter time his brother was taken with a group of ten detainees from the FC *Iskra* stadium camp to perform labor in the Gornji Vakuf area.⁶⁴⁵

496. Witness Rade Marjanović, who was brought from the Gymnasium to the FC *Iskra* stadium camp in early October 1993, indicated that he had been taken to perform labor in the area of Garačački Podovi for ten days.⁶⁴⁶ His group included Pemac, Keškić, Mario Glišić and his own brother. During that time, the detainees were digging trenches and dugouts at the frontline with the VRS.⁶⁴⁷ Mario Glišić stated that he was taken from the *Iskra* stadium in a group of seven or eight

⁶⁴⁰ Closing arguments of the Defense for Nisvet Gasal, p. 17.

⁶⁴¹ Vlatko Brnas (1 October 2008).

⁶⁴² Vlatko Brnas (1 October 2008).

⁶⁴³ Dragan Boškić (20 March 2008).

⁶⁴⁴ Dragan Boškić (20 March 2008).

⁶⁴⁵ Rade Marjanović (11 March 2009).

⁶⁴⁶ Rade Marjanović (11 March 2009).

⁶⁴⁷ Rade Marjanović (11 March 2009).

detainees to perform labor in the area of Garačački Podovi near Kupres. The witness was adamant that he did not volunteer for work, but that a guard read out his name from a list. At that location, the detainees dug trenches and fortified positions near an area held by the VRS. The witness mentioned that Željko Spremo (aka Pemac) had also been there, adding that they were taken out of the camp in late September 1993.⁶⁴⁸ However, after considering of all of the witness testimony adduced during the trial, the Panel determined that the detainees were taken to perform this labor in October 1993. The Panel specifically notes that Rade Marjanović had also stated that he had been taken from the Gymnasium to the FC *Iskra* stadium camp in October 1993. Except for inconsistencies in the time they were taken to perform labor, these witness accounts were consistent and mutually corroborative. Rade Marjanović confirms the presence of Mario Glišić, and both confirm the presence of Željko Spremo (aka Pemac). This leads the Panel to conclude that it was the same group of detainees that was taken to this location.

497. Dragan Keškić stated that in November 1993 he was removed from the FC *Iskra* stadium camp with about 10-20 other detainees to perform labor at Guvna, where they dug trenches. Based on the need for trenches, the Panel concludes that Guvna was near the front line. They were held at the location for about 20 days and then returned to the *Iskra* stadium camp.⁶⁴⁹ In his 10 September 2001 and 27 April 2002 statements to ICTY investigators, Dragan Keškić provided a detailed account of his detention at the FC *Iskra* stadium camp and the labor he performed at Guvna. This witness' statement is coherent, and the Panel regards it as credible and honest, and fully accepts the witness' assertions in this regard. The Panel notes that the Defense did not challenge the credibility of this witness' testimony during the trial.

⁶⁴⁸ Mario Glišić (14 May 2008).

⁶⁴⁹ T-134 (Witness Dragan Keškić's statements dated 10 September 2001 and 27 June 2002).

2. Acts of Nisvet Gasal

(a) whereby he substantially participated in the unlawful taking of persons of Croat ethnicity to perform prohibited forced labor

498. Nisvet Gasal, as warden for the *Iskra* stadium camp, assumed certain responsibilities for the care of the detainees.

499. The Prosecution explained that the military assumed overall responsibility for the detainees. Based on the expert witnesses, it is clear to the Panel that the detainees who surrendered after the conflict were the legal responsibility of the military. It is also clear that the military, at least at first, was not fully in control of the situation in Bugojno. The Wartime Presidency exerted unusual authority, and in fact violated the principle of unity of command by operating outside of the official establishment of the ARBiH.

500. It is clear to the Panel that the Wartime Presidency exercised its authority in converting a public building (i.e. the stadium) for use as a prison. It was then later designated as a detention center by the Wartime Presidency. Then operations of the camp were assumed by the military, culminating in the closure of the facility in March 1993.

501. Although the stadium was selected for use as a detention center by the Wartime Presidency, it is unclear what, if any, administrative involvement they had after that. The nature of Gasal's appointment to the position of Warden is similarly unclear. Gasal testified that Dautović, to whom he was a subordinate at the time, recommended him. But it is clear from his military documentation that Gasal held the position at the stadium not as a civilian policeman but as a member of the military. While re-subordination was common at the time, his appointment still had to be issued by the military.

502. The evidence reveals that his immediate supervisor was Enis Handić, and then later Duatović, when Dautović joined the military. The Panel finds that although Gasal was in the position of warden, he possessed limited authority. While Gasal tried to improve the conditions of the detainees, he seems to have had little support from the military. In fact, when Kukavica wanted lumber to help build beds or

platforms for sleeping, the wood had to be stolen, as there was no other way to get the necessary materials.

503. According to Gasal's own testimony he received no instructions or training in how to operate the camp. There is no evidence he had any real authority to implement meaningful change. However he did have an obligation not to engage, commit or further inhuman treatment. And as a member of the military he had an obligation not to follow an illegal order.

504. The Panel finds that at a minimum he had a duty of care to the detainees who had surrendered after the conflict. This duty of care was to prevent harm in situations under his control. For the most part the Prosecution failed to show that Gasal caused any direct harm to the detainees. He tried and did improve their living situation to the extent possible. There was no direct evidence that he participated in any beatings. Most of the evidence reflected efforts he made to improve a bad situation. Few witnesses wished him harm or claimed that he had harmed them.

505. However the Panel did find that there were a few situations where a lack of action on his part amounted to a serious omission. The first of these acts concerns forced labor.

506. It is clear that the military was sending orders to the stadium personnel for the selection of detainees for labor. Some of this labor most likely was not illegal, provided the conditions of the labor were not inhumane. However, there is a clear prohibition against endangering the lives of detainees, especially for work involving a military necessity such as digging trenches at the front lines.

507. In this instance the Panel finds that Gasal had actual knowledge that this was occurring. He spoke specifically with Miroslav Želić and learned of the nature of the labor. He could see from Miroslav Želić's injury that the work was indeed dangerous. However there is no evidence that Gasal made any attempt to stop this practice, or even complain about it to anyone in command. Although there was no evidence to show that Gasal had any effective control over members of the military who came to the camp, selected the detainees for labor, or escorted them out of the camp, there was also no evidence that Gasal even filed a complaint or a report of this activity to anyone above him. He did nothing. This is what the Panel finds is unacceptable.

The Panel notes, as will be shown below, that when Gasal finally complained about the abusive guards he was able to solve the problem of the beatings. But as to the forced labor, Gasal's defense was simply that all instances of forced labor occurred before he assumed the position of warden. The evidence shows that the practice of the military taking detainees out from the camp for forced labor continued even after he arrived. The Panel finds that he had direct knowledge of the purpose and nature of the labor yet did nothing. His conduct regarding the abusive guards indicates that he knew he had the duty to at least object and report this clearly illegal behavior.

508. Already upon assuming the duty of a warden of the FC *Iskra* stadium camp, Nisvet Gasal knew that the detainees from this camp were being taken to perform labor. The Panel concluded this from the testimony of Nisvet Gasal himself. Gasal stated that when he took over this duty, three groups of detainees had performed labor at the sites of Donji Vakuf, Gornji Vakuf and Prusac.⁶⁵⁰ Upon his arrival in the camp as a warden, he found lists of detainees who had performed labor.⁶⁵¹ Nisvet Gasal testifies that these sites were at the front lines during the critical period.⁶⁵²

509. Given Nisvet Gasal's knowledge that the detainees were taken to perform labor at the frontlines, and the fact that it is common knowledge that fighting between opposing parties takes place at the frontlines, inasmuch as the parties there exchange fire, Nisvet Gasal was undoubtedly aware of a possibility that these persons could be wounded.

510. Nisvet Gasal described the manner in which the detainees were taken to perform labor. Security organs of the 307th Motorized Brigade would give approvals for the detainees to be taken to perform labor, indicating both the number of detainees required and the number of days the detainees will perform labor.⁶⁵³ Nisvet Gasal was never present when these persons were taken to perform labor.⁶⁵⁴ Musajb

⁶⁵⁰ Nisvet Gasal (17 February 2010).

⁶⁵¹ Nisvet Gasal (17 February 2010); T-560 (OG West IKM Gornji Vakuf dated 3 September 1993); O-13/1 (Approval by the Command of the 307th Motorized Brigade, security organ number: 307-13-728/93 dated 20 August 1993).

⁶⁵² Nisvet Gasal (3 March 2010).

⁶⁵³ Nisvet Gasal (17 February 2010).

⁶⁵⁴ Nisvet Gasal (17 February 2010).

Kukavica, guard shift leaders or military police officers selected the detainees to perform labor.⁶⁵⁵

511. Even though Nisvet Gasal testifies that only one group of the detainees was taken from the camp to perform labor, on which occasion detainee Miroslav Zelić and,⁶⁵⁶ a member of the ARBiH, Enver Halilović, were wounded (paragraphs 483 - 490), it has been found that during the period from 22 September 1993 through 19 April 1994, forced labor was performed at other sites, too (paragraphs 492 - 497).

512. In explaining the camp structure, Nisvet Gasal states that three guard-shifts operated in the camp, each led by a guard shift leader. Each shift operated for 24 hours continuously, and thereupon rested for 48 hours. In this way, one shift⁶⁵⁷ secured the FC *Iskra* stadium camp every third day in a row. Besim Cetin⁶⁵⁸ and Hamid Đopa⁶⁵⁹ have consistently confirmed the foregoing.

513. During the guard shift transfer every morning, guard shift leaders would also call out the detainees to ascertain their number.⁶⁶⁰

514. Each time the number of detainees changed in relation to the number from the previous day, Nisvet Gasal would be informed accordingly by the guard shift leaders.⁶⁶¹ Hamid Đopa also confirms this fact. This witness testifies that while he was a guard shift leader, he would handover to the next guard shift leader upon the completion of his shift, and then reported to the camp administration to inform them about any events and the number of detainees as at the previous day.⁶⁶² Besim Cetin also undoubtedly testifies that the guard shift leaders used to come to the camp administration to report about events and the number of detainees in the camp.⁶⁶³

515. Even if, as Gasal stated, these orders to take detainees to perform labor were not always issued by the camp administration, but rather were issued directly by the

⁶⁵⁵ Nisvet Gasal (17 February 2010).

⁶⁵⁶ Nisvet Gasal (17 February 2010).

⁶⁵⁷ Nisvet Gasal (17 February 2010).

⁶⁵⁸ Besim Cetin (3 February 2010).

⁶⁵⁹ Hamid Đopa (13 January 2010).

⁶⁶⁰ Hamid Đopa (13 January 2010).

⁶⁶¹ Nisvet Gasal (17 February 2010, (3 March 2010)).

⁶⁶² Hamid Đopa (13 January 2010).

military to the camp guards, the foregoing clearly demonstrates that at any moment during the critical period, Nisvet Gasal knew the number of detainees and their whereabouts. Therefore, the Panel concludes that Nisvet Gasal was aware of all the sites where the detainees from the FC *Iskra* stadium camp were taken to perform labor.

516. Based on the above, the Panel finds that Nisvet Gasal made a significant contribution to a system whereby persons of Croat ethnicity were unlawfully taken to perform forced labor.

3. General factual findings for Inhuman Treatment

(a) During the same period, a large number of detainees in the camp were abused by the guards at the camp and other unknown persons [...] with the following detainees abused in that period: Niko Visković a.k.a. Koni, Fabijan Lovrić, Kazimir Kaić, Ilija Udovičić, Željko Spremo, Mario Miloš, Zdravko Kezić, Milenko Begić, Ivica Lozančić, Ilija Dujmović whom the guards took out of the room in which he was detained to the camp compound where he was handcuffed and, subsequently, while one of the guards held a rifle pointed at him the other hit him several times in his stomach, thus inflicting on him serious mental and physical suffering and injury, and on other detainees

517. The Panel finds that the Prosecution proved beyond a reasonable doubt that in the period from the establishment of the camp at the FC *Iskra* stadium in August 1993, pursuant to the Decision of the Wartime Presidency of the Bugojno Municipality, until 19 March 1994, more than 300 men of Croat ethnicity were detained there, and that in the period from 22 September 1993, when Nisvet Gasal assumed the function of the warden, until 19 March 1994, many detainees were abused by the camp guards and other unidentified persons.

518. The Panel has established the facts pertaining to the formation of the camp at the FC *Iskra* stadium and the tenure of Nisvet Gasal as the warden of the camp in paragraphs 465 - 476, and cited the evidence supporting these findings. Therefore,

⁶⁶³ Besim Cetin (3 February 2010).

the Panel will not re-establish these facts but will focus on the findings of fact pertaining to the beatings of individual prisoners at the FC *Iskra* stadium camp.

519. Based on numerous exhibits, the Panel has found that in the period from 22 September 1993 until 19 March 1994 the following detainees were abused: Niko Visković (aka Koni), Fabijan Lovrić, Kazimir Kaić, Ilija Udovičić, Željko Spremo, Mario Miloš, Zdravko Kezić, Milenko Begić, Ivica Lozančić, and Ilija Dujmović, whom the guards took out of the room in which he was detained in the camp, handcuffed him and while one of the guards aimed his rifle at him the other one hit him several times in the stomach, thus inflicting on him, as well as on other detainees, serious mental and physical suffering and pain.

520. The vast majority of detainee beatings in this camp occurred before 22 September 1993. As these crimes took place before Nisvet Gasal was appointed the warden of the FC *Iskra* stadium camp, the Panel has evaluated only the evidence that pertains to his tenure at the camp. These facts are described in paragraphs 522 - 571.

521. As previously noted, some witnesses who testified about these events were unable to determine the precise time frame in which prisoners were beaten at the FC *Iskra* stadium camp. This is primarily due to the length of time between the perpetration of alleged acts and the date of their testimony. Therefore, the Panel first evaluated the testimony of witnesses who were brought from the Gymnasium to the FC *Iskra* stadium camp in early October 1993, as it is clear that Nisvet Gasal was the warden of this facility during that time. The Panel evaluated other evidence as well, checking for consistency with the testimony of these witnesses and otherwise ensuring that the evidence formed a reliable basis for the Panel to establish facts beyond a reasonable doubt.

522. Based on the testimony of Rade Marjanović⁶⁶⁴ and Ivica Klarić,⁶⁶⁵ the Panel concludes that Niko Visković (aka Koni) was beaten after 22 September 1993 at the FC *Iskra* stadium camp.

⁶⁶⁴ Rade Marjanović (11 March 2009).

⁶⁶⁵ Ivica Klarić (27 February 2008).

523. Rade Marjanović was brought with a group of prisoners, the majority of whom were members of the MUP HZ HB, from the Gymnasium to the FC *Iskra* stadium camp in early October (paragraph 479). In his testimony about the beating of the prisoners at the FC *Iskra* stadium camp, Rade Marjanović stated the following:

Witness: Well, I remember Kazimir Kajić and Visković, first name Ante, if I am not mistaken, they called him Koni, he lives in the US now, and to be honest I don't think they knew who beat them either.

Prosecutor: Could these persons who sustained injuries in the stadium request medical assistance?

Witness: When this happened with Kajić and Visković, no one asked if they needed anything, and everyone could see that these people were not ok. They did not ask for medical assistance either, we just soaked some compresses in salt water and applied them, so to speak.

Prosecutor: Could you report to the guards you knew that someone was injured and did you ever do it?

Witness: No, I didn't.⁶⁶⁶

524. The testimony of Rade Marjanović was corroborated by Ivica Klarić who did not specify the time when Niko Visković (aka Koni) was beaten, but confirmed without doubt that Niko Visković (aka Koni) was taken from the FC *Iskra* stadium camp and returned in a visibly beaten state. Ivica Klarić also stated that the prisoners were beaten at nighttime, when unidentified persons frequented the FC *Iskra* stadium camp, called the prisoners out, took them to the pitch and beat them there.⁶⁶⁷

525. It follows from the testimony of Kazimir Kaić⁶⁶⁸ and Ilija Udovičić⁶⁶⁹ that they were beaten at the FC *Iskra* stadium camp.

526. Kazimir Kaić testified that on 4 December 1993, together with Ilija Udovičić, he was taken to the BH Bank building, which housed the HQ of the RBiH Army Military Police, from where they were both taken back to the FC *Iskra* stadium camp few hours later. That night two military police officers came to take him out of the locker room and onto the stadium where there were four or five other persons waiting and

⁶⁶⁶ Rade Marjanović (11 March 2009).

⁶⁶⁷ Ivica Klarić (27 February 2008).

⁶⁶⁸ Kazimir Kaić (8 April 2009).

ordered him to take off his clothes. This is how Kazimir Kaić described what happened next:

I refused, there were four or five centimetres of snow on the ground, I refused and that's when the abuse, the beating, started. I was wearing a shell suit and they ripped it off of me. I had to take my shoes off, and this abuse lasted for half an hour, accompanied by provocation. For example, they asked me while they were taking me out which penalty box I preferred, they said you played in both, so pick one of the two. It was horrible and after an hour I was taken back to the locker room where we were detained. I don't remember what happened afterwards until the morning when I woke up.⁶⁷⁰

527. Kazimir Kaić further stated that those persons had hoods on their heads and that he was sure that the guard Mirsad Čefo was among those involved in the beating. Kazimir Kaić knew him from before and that night he recognized him by his voice. Kazimir Kaić stated that Ilija Udovičić was beaten next.⁶⁷¹

528. The beating of Kazimir Kaić was mentioned in the testimony of Miroslav Zelić,⁶⁷² Rade Marjanović,⁶⁷³ Marko Gunjača⁶⁷⁴ and Ilija Udovičić,⁶⁷⁵ who were also beaten that evening.

529. Miroslav Zelić, who was brought from the Gymnasium to the FC *Iskra* stadium camp in early October 1993, stated that during his detention in the premises of this facility Kazimir Kaić was taken outside one night and beaten up.⁶⁷⁶ This fact was also confirmed by Rade Marjanović who gave the following answers to the questions asked by the Defense Counsel for Nisvet Gasal:

Counsel: Alright. You answered to the Prosecutor's questions that some persons were beaten.

Witness: Not some, I specifically said Kazimir Kaić and Visković Ante, they were taken outside and beaten. Based on what they said, they were beaten on the small of their backs, in the center of the pitch, with socks filled with sand and similar implements.

Counsel: Did you see anyone being beaten?

⁶⁶⁹ Ilija Udovičić (3 September 2008).

⁶⁷⁰ Kazimir Kaić (8 April 2009).

⁶⁷¹ Kazimir Kaić (8 April 2009).

⁶⁷² Miroslav Zelić (20 February 2008).

⁶⁷³ Rade Marjanović (11 March 2009).

⁶⁷⁴ Marko Gunjača (20 February 2008).

⁶⁷⁵ Ilija Udovičić (3 September 2008).

⁶⁷⁶ Miroslav Zelić (20 February 2008).

Witness: I helped them, those who were beaten.

Counsel: What kind of help?

Witness: I helped the people who were beaten up, which means that I saw him in a beaten up shape.

Counsel: But did you see someone beating them?

Witness: No.

Counsel: What time of day or night was it when these people were beaten?

Witness: It happened during night time.

Counsel: Only during night time?

Witness: Only during night time.⁶⁷⁷

530. Marko Gunjača also testified about the beating of Kazimir Kaić and stated that he was beaten while he was detained at the FC *Iskra* stadium camp as follows: “[...] I also remember Kazimir Kaić, he was all black and blue, there wasn't an inch of his skin that was of normal color”.⁶⁷⁸

531. In his testimony Ilija Udovičić offered an identical description of how Kazimir Kaić and he had been taken to the premises of the BH Bank and how they had been taken back to the FC *Iskra* stadium camp. Ilija Udovičić further described how he was called out and taken out of the room in which he was detained and the beating that ensued:

[...] they took me to the end of the stadium, across the stands, where the wire is, the wire which forms the fence on the sides, and they told me to raise my hands. I put my hands on the wire like this and they started to beat me on the hands with batons and God knows what, telling me to raise them higher and to spread my legs, then they started to beat me on my genitals and then my back and all over my body, but before that they threatened me not to turn around because they would kill me if I do that, they didn't want me to identify them.

532. Ilija Udovičić further said that he recognized the guard Šečić from among the group of persons who committed the beating and confirmed that Kazimir Kaić was beaten at the FC *Iskra* stadium camp.⁶⁷⁹

⁶⁷⁷ Rade Marjanović (11 March 2009).

⁶⁷⁸ Marko Gunjača (20 February 2008).

⁶⁷⁹ Ilija Udovičić (3 September 2008).

533. Dragan Boškić also testified about the beatings at the FC *Iskra* stadium camp and confirmed the beating of Ilija Udovičić. Dragan Boškić added that the beatings of prisoners occurred outside and at night.⁶⁸⁰

534. The testimony of Kazimir Kaić and that of Ilija Udovičić are consistent in the important parts and corroborate the testimony of other witnesses who testified about these circumstances, wherefore the Panel gave them credence.

535. The Panel finds that the only discrepancy in these testimonies is related to the time when the beating of these prisoners occurred. Kazimir Kaić stated that the beating took place on 4 December 1993,⁶⁸¹ while Ilija Udovičić stated that it took place on 29 November 1993 or before.⁶⁸²

536. However, the Panel finds that this discrepancy does not have any bearing on the finding of guilt of Nisvet Gasal, as Nisvet Gasal held the position of camp warden at the FC *Iskra* stadium camp during both November and December 1993.

537. The beating of Željko Sprema (aka Pemac) took place during Nisvet Gasal's tenure as the warden of the camp, according to the testimony of Miroslav Zelić,⁶⁸³ Slaven Brajković,⁶⁸⁴ Gordan Raić,⁶⁸⁵ Ivica Topić,⁶⁸⁶ Ivica Klarić⁶⁸⁷ and witness D.⁶⁸⁸

538. Miroslav Zelić, who was brought to the stadium in early October 1993 (paragraph 479), clearly and unequivocally stated that Željko Sprema (aka Pemac) was beaten upon his arrival at the camp.⁶⁸⁹ Taking into account his testimony in which this witness described the beating of Kazimir Kaić and Fabijan Lovrić as well, which is confirmed by the testimony of other witnesses,⁶⁹⁰ the Panel finds the testimony of Miroslav Zelić to be credible. Slaven Brajković, who was brought in early October to the FC *Iskra* stadium camp from the Gymnasium with a group of

⁶⁸⁰ Dragan Boškić (20 March 2008).

⁶⁸¹ Kazimir Kaić (8 April 2009).

⁶⁸² Ilija Udovičić (3 September 2008).

⁶⁸³ Miroslav Zelić (20 February 2008).

⁶⁸⁴ Slaven Brajković (3 September 2008).

⁶⁸⁵ Gordan Raić (13 February 2008).

⁶⁸⁶ Ivica Topić (5 March 2008).

⁶⁸⁷ Ivica Klarić (27 February 2008).

⁶⁸⁸ Svjedok D (21 January 2009).

⁶⁸⁹ Miroslav Zelić (20 February 2008).

⁶⁹⁰ Rade Marjanović (11 March 2009); Gunjača Marko (20 February 2008); Ilija Udovičić (3 September 2008).

persons (paragraphs 479 - 480), also confirmed the beating of Željko Premac (aka Pemac) and stated that he thought that it happened in October 1993.⁶⁹¹ The beating of Željko Sprema was confirmed by the testimony of witnesses Ivica Topić,⁶⁹² Ivica Klarić⁶⁹³ and witness D.⁶⁹⁴ Gordan Raić, in his testimony during the main trial, gave the following answers to the Prosecutor's questions:

Prosecutor: Do you know Mr. Raić that some prisoners were beaten at the stadium?

Witness: They took Pemac out one night, they chased him across the room, he didn't want to come out, they tied him at the *Iskra* stadium, where this club plays football, where football matches are held.

Prosecutor: On the grass?

Witness: Yes, I didn't see anything, I only heard, ouch, ouch, when he returned he was all black and blue, he slept next to me, he didn't want to come out, it lasted for half an hour, the chasing around the room, Premac, a well known Bugojno citizen, didn't want to come out.⁶⁹⁵

539. Nisvet Gasal did not mention this fact when he testified during the main trial, however, in his statement to the Prosecutor's Office during the investigation he clearly and unequivocally stated that he had learned about the beating of Željko Sprema while he discharged the duties of the warden of the FC *Iskra* stadium camp.⁶⁹⁶

540. Accordingly, the Panel concludes that it has been proved beyond a reasonable doubt that Željko Sprema (aka Premac) was beaten during the tenure of Nisvet Gasal as the warden of the FC *Iskra* stadium camp.

541. Testimony of Mario Franjić confirms that Mario Miloš was beaten during the relevant time at the FC *Iskra* stadium camp. In his testimony about the beating of Mario Miloš, Mario Franjić stated that:

I only heard the yowls of pain and screams and someone begging not to be beaten, and my friend Mario Miloš, who slept opposite from where I was, he was

⁶⁹¹ Slaven Brajković (3 September 2008).

⁶⁹² Ivica Topić (5 March 2008).

⁶⁹³ Ivica Klarić (27 February 2008).

⁶⁹⁴ Witness D (21 January 2009).

⁶⁹⁵ Gordan Raić (13 February 2008).

⁶⁹⁶ T-631-b (Suspect examination record of Nisvet Gasal, Prosecutor's Office of BiH, No. KT-RZ-125/07 dated 13 September 2007).

called to come outside into the corridor, we only heard dull blows, yawns of pain, and him begging not to be beaten, and when he returned I helped him as much as I could to stop the bleeding in any way possible.⁶⁹⁷

542. Mario Franjić also stated that Mario Miloš was called out in the evening hours, as a result of which he could not recognize the persons who took him out and he could not tell who they were by their voices. Mario Franjić was adamant that the beating of Mario Miloš occurred in November 1993.⁶⁹⁸

543. The Panel has no reason to doubt the testimony of this witness and the Defense did not undermine the credibility of his account during the trial.

544. Zdravko Kezić and Milenko Begić testified directly about their beatings during their time at the FC *Iskra* stadium camp. Zdravko Kezić gave a detailed account of his and Milenko Begić's incarceration in the premises of the FC *Iskra* stadium camp. He described his and Milenko Begić's beating and stated that four or five times he was taken to the pitch, together with Milenko Begić, in the evening hours, and was kicked and punched by unidentified persons. Zdravko Kezić clearly and unequivocally stated that they used to be taken to the pitch and beaten there even after the visit of the ICRC to the FC *Iskra* stadium camp. These beatings left a scar on his face and resulted in two of his teeth being knocked out. Zdravko Kezić stated that he was exchanged on 12 October 1993 together with Milenko Begić and another prisoner.⁶⁹⁹

545. Milenko Begić also gave a detailed account of his and Zdravko Kezić's incarceration at the FC *Iskra* stadium camp. The witness stated that he and Zdravko Kezić were taken to the pitch three or four times by unknown persons and were beaten there. The beatings took place in the evening hours. The assailants had hoods on their heads so he could not identify them. As regards the time of these beatings, Milenko Begić corroborated the testimony of Zdravko Kezić, that he and Zdravko Kezić were once again taken to the pitch and beaten there following the ICRC visit to the camp.⁷⁰⁰ Milenko Begić stated that he was detained at the FC *Iskra*

⁶⁹⁷ Mario Franjić (5 March 2008).

⁶⁹⁸ Mario Franjić (5 March 2008).

⁶⁹⁹ Zdravko Kezić (2 July 2008).

⁷⁰⁰ The Panel recalls that the ICRC visited the FC *Iskra* stadium camp for the first time on 28 September 1993 (paragraph 302).

stadium camp until 13 October 1993, when he was exchanged together with Zdravko Kezić and one or two other detainees.⁷⁰¹

546. Witness B also corroborated the account of the beatings of Zdravko Kezić and Milenko Begić at the FC *Iskra* stadium camp.⁷⁰²

547. In his testimony about the beating of the prisoners in the FC *Iskra* stadium camp, witness B stated the following while answering questions of the Defense Counsel for Nisvet Gasal:

Defense Counsel: Witness B, you were not physically ill-treated at the stadium?

Witness B: I was beaten at the stadium, in the camp, only during the night when Miljenko Begić and Zdravko Kezić were beaten.

Counsel: Do you know what month it was?

Witness B: I think it was November.⁷⁰³

548. Witness B corroborated the beating of Zdravko Kezić and Milenko Begić. However, witness B stated that the beating of these persons occurred in November.⁷⁰⁴ The Panel notes that Zdravko Kezić and Milenko Begić were exchanged on 12 October 1993.⁷⁰⁵ As such the Panel gives credence to witness B only in reference to the fact that these persons had been beaten.

549. There were some discrepancies between the testimony of Milenko Begić and Zdravko Kezić, which were referred to by the Defense during the trial. The Panel finds that the testimony of Milenko Begić and the testimony of Zdravko Kezić are consistent in terms of the decisive facts about the beating and the time when the beating occurred. The Panel therefore deems their testimony in this part to be accurate and authentic.

⁷⁰¹ Milenko Begić (2 July 2008).

⁷⁰² Witness B (26 November 2008).

⁷⁰³ Witness B (26 November 2008).

⁷⁰⁴ Witness B (26 November 2008).

⁷⁰⁵ O-1/1 (Approval of the Security Organ, 307th Motorised Brigade Command, No. 307-13-1022/93 dated 11 October 1993).

550. The Panel concludes that it has been shown beyond a reasonable doubt, based on the testimony of Stipo Vučak,⁷⁰⁶ Ivica Topić,⁷⁰⁷ Drago Žulj,⁷⁰⁸ Ivica Klarić⁷⁰⁹ and witness D,⁷¹⁰ that Ivica Lozančić was beaten during the relevant time.

551. Stipo Vučak stated that upon his arrest by members of the RBiH Army he was taken to Prusac. There, he was detained with a group of around 15 detainees of Croat ethnicity for around two to two and a half months, whereupon they were transferred to the FC *Iskra* stadium camp in Bugojno. The exchange of prisoners was allegedly scheduled for 18 October 1993, wherefore all detainees were brought to the FC *Iskra* stadium camp seven to ten days before that date.⁷¹¹

552. Following the chronology of the events, the Panel concludes that Stipo Vučak was brought to the FC *Iskra* stadium camp in early October 1993, when Nisvet Gasal undoubtedly performed the duties of the FC *Iskra* stadium camp warden.

553. In his testimony about the beatings at the FC *Iskra* stadium camp, Stipo Vučak stated that Ivica Lozančić was taken out of the room in which they were all detained and brought back 15 to 20 minutes later. Stipo Vučak assumed that Ivica Lozančić was called out, and Ivica Lozančić told him when he returned that he was beaten up. He did not tell him the details of the beating and the witness did not see any signs of abuse.⁷¹²

554. The Panel has evaluated the testimony of Stipo Vučak in view of the testimony of Ivica Topić, who was also detained in Prusac. Ivica Topić was captured on 18 or 19 July 1993 and taken to Prusac. Two months later he was transferred to the FC *Iskra* stadium camp with a group of around 20 detainees. Stipo Vučak was detained in the same place as Ivica Topić.⁷¹³

⁷⁰⁶ Stipo Vučak (9 July 2008).

⁷⁰⁷ Ivica Topić (5 March 2008).

⁷⁰⁸ Drago Žulj (27 February 2008).

⁷⁰⁹ Ivica Klarić (27 February 2008).

⁷¹⁰ Witness D (21 January 2009).

⁷¹¹ Stipo Vučak (9 July 2008).

⁷¹² Stipo Vučak (9 July 2008).

⁷¹³ Ivica Topić (5 March 2008).

555. Due to certain contradictions between the testimony of Ivica Topić and other evidence, the Panel cannot establish with certainty when Ivica Topić was taken to the *Iskra* stadium camp.

556. According to his testimony, Ivica Topić was brought to the FC *Iskra* stadium camp in late September 1993 when the warden of the camp was Meho Sadiković. Ivica Topić stated that Nisvet Gasal assumed the duty of the warden of the FC *Iskra* stadium camp approximately two months upon his arrival at the camp from the mentioned location.⁷¹⁴ The Panel has already established the exact date of Nisvet Gasal's arrival to assume the duty of the FC *Iskra* stadium camp warden (paragraph 475). Also, based on exhibit T-181 (Decision of the Wartime Presidency of the Bugojno Municipality relieving Mehmed Sadiković of his duty as the warden of the FC *Iskra* stadium camp), Mehmed Sadiković performed the duties of the warden of this camp until 10 September 1993,⁷¹⁵ whereupon Edin Čorhusić⁷¹⁶ and Hidajet Vinčević⁷¹⁷ temporarily performed this duty.

557. Regardless of this inconsistency in Ivica Topić's evidence, the Panel gives credence to the testimony of Ivica Topić with respect to the beating of Ivica Lozančić, because it is consistent with other presented evidence concerning this beating. Ivica Topić stated the following in this regard:

Accused: Ivica Lozančić, can you remember the period when it happened, did it happen at the beginning, when you first got there?

Witness: Yes, that's correct, September, October, November, December, not December, but September, October, November.

Accused: When Meho Sadiković was the warden, during that period, is that what you are saying?

Witness: I am not saying that.

Accused: So, you cannot remember, but never mind.

⁷¹⁴ Ivica Topić (5 March 2008).

⁷¹⁵ T-181 (Decision of the Wartime Presidency of the Bugojno Municipality, No. 01-140.21/93 dated 10 September 1993).

⁷¹⁶ Edin Čorhusić (2 June 2010).

⁷¹⁷ Hidajet Vinčević (5 May 2010).

Witness: But he was regularly beaten.⁷¹⁸

558. Drago Žulj and Ivica Klarić⁷¹⁹ also confirmed that Ivica Lozančić was beaten in the FC *Iskra* stadium compound.⁷²⁰ Witness D stated that Ivica Lozančić was beaten in the compound of the camp, and added that the beating occurred in October 1993. As regards the time when Ivica Lozančić was beaten, witness D stated that it happened when two additional rooms were set up in the camp, and that Ivica Lozančić was taken from one of those newly constructed rooms.⁷²¹ The Panel has evaluated the testimony of witness D in relation to the testimony of Nisvet Gasal, who stated that two new rooms were built when he assumed the duty of the warden of this camp.⁷²²

559. Based on the foregoing, the Panel concludes that Ivica Lozančić was beaten during the tenure of Nisvet Gasal as the warden of the FC *Iskra* stadium camp.

560. According to the testimony of Ilija Dujmović, he was taken out of the room in which he was detained at the FC *Iskra* stadium camp by the guards and handcuffed, whereupon one guard aimed his rifle at him, while the other one kicked him several times in the stomach.⁷²³

561. Ilija Dujmović also stated that he was taken from the Gymnasium to the FC *Iskra* stadium camp in October 1993, after Nisvet Gasal had assumed the duty of the warden of this camp.⁷²⁴

562. In his testimony about his incarceration in this camp, Ilija Dujmović stated:

[T]his one guard took me out and handcuffed me and aimed his rifle at me, the other one kicked me several times in the stomach. I remember that, I don't know if something else happened. I noticed thereafter, when I returned, that my stool was black, but I didn't know why it was so, why my stool was black, which I never had before, and then I fainted. I was taken to the hospital because I had internal bleeding.⁷²⁵

⁷¹⁸ Ivica Topić (5 March 2008).

⁷¹⁹ Ivica Klarić (27 February 2008).

⁷²⁰ Drago Žulj (27 February 2008).

⁷²¹ Witness D (21 January 2009).

⁷²² Nisvet Gasal (17 February 2010).

⁷²³ Ilija Dujmović (4 February 2010).

⁷²⁴ Ilija Dujmović (4 February 2010).

⁷²⁵ Ilija Dujmović (4 February 2009).

563. Ilija Dujmović stated that he stayed in the Bugojno hospital for around a month after this incident.⁷²⁶ This is confirmed by exhibit T-564 (Security Assessment of the Security Organ of the 307th Motorized Brigade of the RBiH Army), indicating that Ilija Dujmović was at the Health Centre in Bugojno on 23 October 1993.⁷²⁷

564. In his testimony about the beating of the prisoners at the FC *Iskra* stadium camp, Zoran Pocrnja confirmed that Ilija Dujmović was taken out of the room in which they were detained and beaten up. In his description of the mentioned incident, the witness stated the following:

Dujmović, for example, what was his first name, I think his last name was Dujmović, he was beaten and brought back to the stadium and he collapsed, they had to wrap him in a blanket and carry him, I guess, to the hospital.⁷²⁸

565. Rade Marjanović who was brought from the Gymnasium to the FC *Iskra* stadium camp in early October 1993 also confirmed the beating of Ilija Dujmović.⁷²⁹

566. The Panel found, based on the testimony of Miroslav Zelić, that Fabijan Lovrić was beaten during the relevant period. Miroslav Zelić, who was not present during the beating of Fabijan Lovrić, testified about this incident based on what he had heard from other prisoners. According to Miroslav Zelić, the injured party, Fabijan Lovrić, insulted the guards in the FC *Iskra* stadium camp the night before the exchange. The detainees believed that the guards did not have the keys to the room where they were held. However, Zelić believed the guards called in the members of the military police of the 307th brigade who did manage to enter the room in which Fabijan Lovrić was detained and beat him up.⁷³⁰

567. Suvad Delić, leader of one guard shift in the FC *Iskra* stadium camp, stated that he was aware that one prisoner was beaten in the FC *Iskra* stadium camp the night before the exchange, but he did not mention the name of that prisoner. Suvad Delić was present that last night in the office of the FC *Iskra* stadium camp administration. He did have the keys to the rooms in which the prisoners were

⁷²⁶ Ilija Dujmović (4 February 2009).

⁷²⁷ T-564 (Security Assessment of the Security Organ of the 307th Motorized Brigade, No. 307-13-1105/93 dated 23 October 1993).

⁷²⁸ Zoran Pocrnja (20 August 2008).

⁷²⁹ Rade Marjanović (11 March 2009).

⁷³⁰ Miroslav Zelić (20 February 2008).

detained. He stated that on the last night someone had brought alcoholic beverage into the camp, and that Fabijan Lovrić started to insult the guards, sing insulting songs and curse at them. The noise which this prisoner made could be heard all the way to the FC *Iskra* stadium camp administration offices. The Brigade police came soon afterwards and broke in the door where the prisoners were detained and beat him up.⁷³¹

568. Witness B also testified about the beating of this prisoner which happened during the night before the exchange, or more specifically on 18 March 1994. Witness B was not an eyewitness of this incident but he testified about what he had indirectly learned about these incidents. In his testimony about what he had heard from other prisoners, which is consistent with the testimony of Miroslav Zelić and Suvad Delić, witness B stated that this prisoner was beaten the night before the exchange. The reasons that led to the beating of this prisoner were unknown to witness B, and there was a discrepancy between the testimony of witness B and Miroslav Zelić concerning the name of this prisoner.⁷³²

569. Witness B stated that the name of this prisoner who was beaten up the night before the exchange was Jozo Lovrić,⁷³³ while Miroslav Zelić stated that his name was Fabijan Lovrić.⁷³⁴

570. Having analyzed the testimony of Miroslav Zelić and witness B, the Panel finds that Miroslav Zelić gave a more detailed account of this incident, that he had more information about the circumstances of this prisoner's beating and also about his identity. The accuracy of Miroslav Zelić's account is confirmed by the testimony of Suvad Delić, who gave an identical account of the beating of this prisoner (even though he did not mention the name of the beaten individual). Accordingly, the Panel admitted the testimony of Miroslav Zelić regarding the identity of the beaten prisoner and found that the prisoner Fabijan Lovrić was beaten the night before the exchange.

571. The fact that members of the Military Police of the 307th Motorized Brigade of the Army of BiH beat up one prisoner in the FC *Iskra* stadium camp was not disputed

⁷³¹ Suvad Delić (13 January 2010).

⁷³² Witness B (26 November 2008).

⁷³³ Witness B (26 November 2008).

⁷³⁴ Miroslav Zelić (20 February 2008).

by Nisvet Gasal in his testimony. Nisvet Gasal stated the following during the examination in chief conducted by his Defense Counsel:

Counsel Kreho: Alright, save for this incident, the beating, you said that there were no other problems, ill-treatments.

Witness-Accused Gasal: No, except for what I said. I was on my way that last day, before the exchange, I was not there, I learned about it the following morning, and I saw it. The guards, they let loose, the atmosphere was more relaxed, someone brought alcohol. I know that one of the prisoners got drunk, yelled insults, it resulted with an incident, and I know that the military police intervened. They told me this the following morning. They separated this man from the others. I found him the following morning in another room. I remember well that he cried. Someone told him that he would not be exchanged. I told him of course you would be exchanged, the exchange has been arranged, you are on the list. He returned and he was exchanged, and everything turned out ok.

Counsel Kreho: Alright, this incident, you said that you were not there. This happened...

Witness-Accused Gasal: No, no, in the morning, in the morning...

Counsel Kreho: In the evening?

Witness-Accused Gasal: In the evening, this happened during the night and police intervened, I did not go there at all. Honestly, I learned about this incident the following morning from the guard shift leader, but the exchange took place that morning so they were already gone.⁷³⁵

572. Based on the above, the Panel considers it established beyond a reasonable doubt that in the period from 22 September 1993 until 19 March 1994, during the time that Nisvet Gasal was undoubtedly the warden of the camp at the FC *Iskra* stadium, the following persons were abused: Niko Visković (aka Koni), Fabijan Lovrić, Kazimir Kaić, Ilija Udovičić, Željko Spremo, Mario Miloš, Zdravko Kezić, Milenko Begić, Ivica Lozančić and Dujmović Ilija.

⁷³⁵ Nisvet Gasal (17 February 2010).

4. Acts of Nisvet Gasal

(a) while Nisvet Gasal failed to take reasonable and necessary measures to prevent the abuse of detainees at the camp for whose operation he was responsible, which he could have done by sanctioning or reporting his subordinates and other offenders, although he was aware that his failure to act will result in the abuse of detainees

573. The Panel concludes that it has been proved beyond a reasonable doubt that Nisvet Gasal did not take reasonable and necessary measures to prevent the abuse of detainees at the camp for whose operation he was responsible, which he could have done by sanctioning or reporting his subordinates and other offenders, although he was aware that this failure to act will result in the abuse of detainees.

574. The Panel finds that Nisvet Gasal discharged the duties of the warden of the FC *Iskra* stadium camp between 22 September 1993 and 19 March 1994 (paragraphs 475 - 476).

575. The Panel has determined who had jurisdiction over the FC *Iskra* stadium camp during the relevant period (22 September 1993 through 19 March 1993) as well as the organizational structure of the camp.

576. The Panel has considered the fact that the Wartime Presidency of Bugojno rendered a decision at the 21st extraordinary session (9 September 1993) that placed the FC *Iskra* stadium under military control.⁷³⁶ This decision was followed by exhibit T-510 (Order of the OG West dated 11 September 1993 sent to the 307th Motorized Brigade of the RBiH Army) according to which prisoners could not be taken out of the official premises without a written approval of the Chief of the Military Security of the 307th Motorized Brigade of the RBiH Army.⁷³⁷

577. The Panel has established that the FC *Iskra* stadium camp was undoubtedly under the control of the 307th Motorized Brigade of the RBiH Army during the relevant period based on many other adduced exhibits, and the testimony of Nisvet Gasal,

⁷³⁶ T-180 (Excerpt from the Minutes of the 21st Extraordinary Session of the Wartime Presidency of the Bugojno Municipality, No. 21/93 dated 9 September 1993)

⁷³⁷ T-510 (Order of the OG West, strictly confidential, No. 04/620-93 dated 11 September 1993)

who stated that all orders, including approvals for the removal of the prisoners for interviews and orders related to their release, had been received from the Security Organ of the 307th Motorized Brigade of the RBiH Army.⁷³⁸ This is confirmed by the orders, approvals and consents issued by the Security Organ of the 307th Motorized Brigade of the RBiH Army (and later by the Security Service of the OG West of the RBiH Army) adduced during the trial.⁷³⁹

578. Although he denied that he or his service had any jurisdiction over this facility, Enes Handžić failed to offer a convincing explanation for the removal of the prisoners to perform labor pursuant to the orders of the Security Organ of the 307th Motorized Brigade of the RBiH Army, the Security Organ's involvement in the procurement of some materials for the needs of the FC *Iskra* stadium, as well as many other issues. The approval issued by the Security Organ of the 307th Motorized Brigade of the ARBiH (signed by Enes Handžić), tendered by the Accused Nisvet Gasal, that allowed Nisvet Gasal to travel to Sarajevo, goes in favor of this conclusion.⁷⁴⁰

579. Nisvet Gasal provided a clear explanation about how he was transferred from the SJB Bugojno to the FC *Iskra* stadium camp, where he assumed the position of the warden.⁷⁴¹

580. In his testimony about the management structure of the FC *Iskra* stadium camp, he stated that his deputy during the relevant time was Besim Cetin, that Musajb Kukavica performed the duties of the security commander and that Nihada Muratović was his secretary. The working hours of the management of the FC *Iskra* stadium camp were from 08:00 to 16:00 hrs.⁷⁴²

581. These facts were confirmed by Besim Cetin. He stated that in late September 1993 he was transferred from the SJB Bugojno to the FC *Iskra* stadium camp with Nisvet Gasal. In his testimony about the management of the FC *Iskra*

⁷³⁸ Nisvet Gasal (3 March 2010), (17 February 2010).

⁷³⁹ See e.g. O-12/01 (Security Organ, 307th Motorized Brigade Command, ARBiH, No. 307-13-1082/93 dated 21 October 1993); T-609 (Security Organ, 307th Motorized Brigade Command, ARBiH, No. 307-13-1006/93 dated 8 October 2010; O-6/01 (Security Organ, OG West, No. 307-12-1231/93 dated 13 November 1993).

⁷⁴⁰ O-23/I (Approval of the Command of the 307th Motorized Brigade, Security Organ, No. 307-13-1090/93 dated 21 October 1993).

⁷⁴¹ Nisvet Gasal (17 February 2010).

⁷⁴² Nisvet Gasal (17 February 2010).

stadium camp, Besim Cetin stated that Gasal was recommended for the position of the warden and that he agreed to be Gasal's deputy, having first consulted with him on that issue. Musajb Kukavica performed the duties of the security commander in the camp, while Nihada Muratović was the secretary. The working hours of the management of the FC *Iskra* stadium camp were 08:00 to 16:00.⁷⁴³

582. Nisvet Gasal stated that the management of the FC *Iskra* stadium camp was quartered in the business premises of one facility in the Vrbas settlement, some 200 meters away from the stadium.⁷⁴⁴ Besim Cetin stated that the offices of the camp management were around 150 meters away from the stadium.⁷⁴⁵

583. In his further explanation of the structure of the camp, Nisvet Gasal stated that there were three guard shifts in the camp and that each had a guard shift leader. Each shift worked for 24 hours straight, and then rested for 48 hours, so that each shift secured the FC *Iskra* stadium camp every third day.⁷⁴⁶

584. One shift was composed of members of the SJB Bugojno who were resubordinated to the FC *Iskra* stadium camp. There were 13 guards in this shift. The leader of this shift was Sead Šečić and the shift also included one or two other guards who had already been working in the camp as guards, so that the shift numbered the total of 15-17 guards. This shift was referred to by everyone as the MUP shift.⁷⁴⁷ This is confirmed by exhibit T-176-r (Order of the SJB Bugojno) which states that 13 police officers of the SJB were resubordinated to the Security Organ-Prison Warden to secure the town prison and its premises⁷⁴⁸, and exhibit T-176-s, which is the list of these members.⁷⁴⁹

585. The second guard shift was composed of members of the 307th Motorized Brigade of the RBiH Army. There were seven to ten of them and they were transferred to the FC *Iskra* stadium camp. Some guards who were in the FC *Iskra* stadium camp from the very beginning of it functioning were attached to this shift.

⁷⁴³ Besim Cetin (3 February 2010).

⁷⁴⁴ Nisvet Gasal (17 February 2010).

⁷⁴⁵ Besim Cetin (3 February 2010).

⁷⁴⁶ Nisvet Gasal (17 February 2010).

⁷⁴⁷ Nisvet Gasal (17 February 2010).

⁷⁴⁸ T-176-r (Order of the SJB Bugojno, No.19-2/01-505/93 dated 1 October 1993).

Their shift leader was Kemal Dautbegović.⁷⁵⁰ This is confirmed by exhibit T-502 (Approval issued by the detention premises, OG West) indicating that the members of the military police of the OG West were reassigned to the stadium security unit effective on 1 October 1993, and that their service there ceased on 21 March 1993.⁷⁵¹

586. The third guard shift was composed of the guards who had been performing the guard duty from the very establishment of the camp at the FC *Iskra* stadium. The leader of this shift often changed. The leader was initially Mahmut Alibegović, then Sead Čefo, and eventually Suvad Delić.⁷⁵²

587. These facts are confirmed by Besim Cetin⁷⁵³ and Hamid Đopa.⁷⁵⁴

588. Nisvet Gasal stated that the guard shift leader was responsible for his work while his shift was on 24 hour duty. Musajb Kukavica, as the Security Commander, was superior to the guard shift leaders and could issue orders to them. The Deputy Warden of the FC *Iskra* stadium camp, Besim Cetin, could issue orders as well.⁷⁵⁵ Hamid Đopa stated that the guards received orders from the guard shift leaders.⁷⁵⁶

589. Having analyzed the relationship between the Accused Nisvet Gasal on one side and the management and other persons who performed the guard duty in the camp on the other, the Panel concluded that the Accused was undoubtedly superior to the camp management, including Deputy Besim Cetin, the Security Commander Musajb Kukavica, guard shift leaders and all other guards in the camp.

590. Hamid Đopa and Suvad Delić confirmed that Nisvet Gasal, upon assuming the duty of the FC *Iskra* stadium camp warden, held himself out as the person of authority in the camp and insisted on discipline. Hamid Đopa stated the following when asked by the Defense Counsel for Nisvet Gasal:

⁷⁴⁹ T-176-s (List of the police force members resubordinated to the Security Organ-Prison Warden to provide security in the town prison and its premises).

⁷⁵⁰ Nisvet Gasal (17 February 2010).

⁷⁵¹ T-502 (Approval, detention premises, OG West, No. 530-3/94 dated 21 March 1994).

⁷⁵² Nisvet Gasal (17 February 2010).

⁷⁵³ Besim Cetin (3 February 2010).

⁷⁵⁴ Hamid Đopa (13 January 2010).

⁷⁵⁵ Nisvet Gasal (3 March 2010).

⁷⁵⁶ Hamid Đopa (13 October 2010).

Counsel Kreho: Ok. How did you come to know that Mr. Gasal became the warden? Did someone tell you that, did he tell you that, how did you find out?

Witness Đopa: Nisvet Gasal, when he became the warden, he held meetings with the camp management.

Counsel Kreho: Alright.

Witness Đopa: With the security personnel. He said that he was appointed warden and he requested right away from everyone to work and maintain discipline in the prison, I remember that well.⁷⁵⁷

591. Suvad Delić stated the following in his testimony regarding this matter:

He imposed discipline among the guards, that was the first thing he did, and Gasal tried to built good relations with the guards, the guard shift leaders, and each and every prisoner, this was his intention, not even to take an improper look at any of the prisoners, and that's how the work was done from thereon, properly, adequately...

592. Suvad Delić also explained his duties as the guard shift leader during the relevant period:

When I assumed this duty, I was told, right at the start, that I should pay attention to the guards and make sure that they behave properly, that they come to work regularly, that they do not behave irresponsibly and ill-treat anyone, that when someone sends food or something from the church to the prisoners, that they should not mess with it, I mean, they can inspect it and deliver it, that they should call the person for whom that package is intended and that I should take care of the prisoners, their health, and make sure that things are done properly, that was my duty.⁷⁵⁸

593. Witness B, in his testimony about Nisvet Gasal as the warden of the FC *Iskra* stadium camp, stated that: “[...] when he was supposed to come to the stadium, everyone was in a haste to make that facility appear proper, they would sweep, clean the snow”.⁷⁵⁹

594. Gasal’s exercise of his supervisory powers failed to prevent detainee abuse.

595. The Panel finds that Nisvet Gasal assumed the superior-subordinate relationship upon his arrival at the FC *Iskra* stadium camp *de jure*, by virtue of his appointment, and *de facto*, by virtue of his exercise of supervisory powers.

⁷⁵⁷ Hamid Đopa (13 October 2010).

⁷⁵⁸ Suvad Delić (13 January 2010).

⁷⁵⁹ Witness B (26 November 2008).

596. The Panel has further analyzed the relations between the stadium management and guard shift leaders. Nisvet Gasal stated that guard shift leaders informed him about the change in the number of prisoners as compared to the previous day and about the events that had taken place the previous day.⁷⁶⁰ Nisvet Gasal, according to his testimony, “on a weekly basis or occasionally”, attended the shift changeover and the roll call of the prisoners.⁷⁶¹ The fact that Nisvet Gasal attended the shift changeover and the roll call was confirmed by Mario Franjić,⁷⁶² Zoran Gvozden,⁷⁶³ Tomljenović Mirko,⁷⁶⁴ Kaić Kazimir⁷⁶⁵ and Gunjača Marko.⁷⁶⁶

597. Hamid Đopa stated that during his tenure as a guard shift leader, he handed over the duty when his shift ended to the next guard shift leader. He then filed a report with the camp management informing them about events and the number of prisoners for the previous day.⁷⁶⁷ Besim Cetin also stated unequivocally that guard shift leaders came to the management offices and informed them about events and the number of the prisoners in the camp.⁷⁶⁸

598. Based on the adduced evidence, the Panel is satisfied that the prosecution has proved beyond a reasonable doubt that Nisvet Gasal was in a superior relationship to his subordinates. Exhibit T-470 (Statement of Musajb Kukavica, Crime Prevention Service of the MP OG West) shows that Nisvet Gasal had the power to punish his subordinate guards at the FC *Iskra* stadium camp, inasmuch as Musajb Kukavica clearly and unequivocally indicated that the guard Sead Šermet: “was ordered into a seven-day military custody by the prison warden because of Asim Velagić's escape [...]”.⁷⁶⁹

599. Musajb Kukavica, as the Security Commander of the FC *Iskra* stadium camp, by virtue of his office during the relevant time and his personal interest in this case,

⁷⁶⁰ Nisvet Gasal (17 February 2010), (3 March 2010).

⁷⁶¹ Nisvet Gasal (17 February 2010), (3 March 2010).

⁷⁶² Mario Franjić (5 March 2008).

⁷⁶³ Zoran Gvozden (21 January 2009).

⁷⁶⁴ Mirko Tomljenović (20 August 2008).

⁷⁶⁵ Kazimir Kaić (4 March 2009).

⁷⁶⁶ Marko Gunjača (20 February 2008).

⁷⁶⁷ Hamid Đopa (13 January 2010).

⁷⁶⁸ Besim Cetin (3 February 2010).

⁷⁶⁹ T-470 (Statement of Musajb Kukavica, Crime Prevention Service of the MP OG West, No. 1100-360-A-94 dated 8 March 1994).

considering that he was brought in for questioning because of the prisoner's escape, was in a position to know what had happened to the guard Sead Šermet.

600. Nisvet Gasal contested the fact that he could punish his subordinates at the FC *Iskra* stadium camp, invoking the mentioned exhibit, but did not provide a convincing explanation or offer any evidence to dispute Musajb Kukavica's statement.⁷⁷⁰

601. This is confirmed by exhibit T-158 (Document of the detention premises, signed by Nisvet Gasal) which includes a list of persons who were "removed from the guard roster in the prison and placed at the disposal of the Personnel and Legal Affairs Service" due to negligence.⁷⁷¹

602. Nisvet Gasal reflected upon this exhibit and stated that the Security Organ of the OG West, the Personnel and Legal Affairs Service,⁷⁷² requested that the prison management send to them 5 to 10 guards who had never been to the front lines before.⁷⁷³ Nisvet Gasal explained that he had to provide some reason for the removal of these guards from the guard roster, which is why the mentioned exhibit read that the guards were negligent in their work.

603. However, the Panel did not accept Nisvet Gasal's explanation because it was not backed up by any corroborating evidence. Gasal's averment that he had to give some explanation for the removal of the guards from the roster, in this Panel's opinion, is not a convincing explanation for his actions, nor is it logical.

604. There are other documentary examples of his ability to discipline the guards. For example, exhibit T-503 (request issued by the detention premises, OG West, signed by Nisvet Gasal) requesting one employee to be designated as a guard for the prisoners, and relieving Dževad Ždralović, a prison guard, of duty due to disciplinary violations.⁷⁷⁴ Additionally, exhibit T-161 (detention premises document dated 14 February 1994, signed by Nisvet Gasal) which requests that Haris

⁷⁷⁰ Nisvet Gasal (17 February 2010).

⁷⁷¹ T-158 (Document of the detention premises OG West, No. 477-3/94 dated 8 March 1994).

⁷⁷² Nisvet Gasal (17 February 2010).

⁷⁷³ Nisvet Gasal (3 March 2010); Nisvet Gasal (3 March 2010).

⁷⁷⁴ T-503 (Detention premises, OG West, No. 277-11/93 dated 20 November 1993).

Hadžiabdić be removed from the guard roster in the prison by the relevant authority due to committed violations, corroborates this finding.⁷⁷⁵

605. The fact that Zijad Salkić, a camp guard, was sanctioned for a disciplinary violation following a report filed by a guard shift leader Hamid Đopa to the prison management, confirms that Nisvet Gasal was superior to the guards in the camp.⁷⁷⁶ Zijad Salkić confirmed that he was sanctioned while performing his duties at the FC *Iskra*. He stated that two military police officers apprehended him and took him to the FC *Iskra* stadium camp where he served his two-day prison sentence.⁷⁷⁷ Even though he stated during the investigation that he was sanctioned by Enes Handžić,⁷⁷⁸ Zijad Salkić testified before the Panel that he did not know who issued the order by which he was punished with a two-day imprisonment.⁷⁷⁹ However, it is clear at a minimum there was a reporting system in place whereby the guards could report to Gasal, and he report to higher military authorities.

606. The fact that guard shift leaders reported to the Accused Nisvet Gasal about the events that took place during the previous day in the FC *Iskra* stadium camp and the number of the prisoners, alongside the fact that the Accused could sanction his subordinate guards, clearly indicates that the Accused Nisvet Gasal was superior to the persons who performed duties in the camp.

607. The Panel considers it proved beyond a reasonable doubt that Nisvet Gasal knew that his failure to undertake necessary and reasonable measures to prevent the abuse of prisoners in the camp, which he could do by sanctioning his subordinates and other perpetrators or filing charges against them, would lead to the abuse of the prisoners.

608. In his testimony during the main trial Nisvet Gasal gave the following answers to the Prosecutor's questions about the complaints of the citizens who resided in the settlements near the FC *Iskra* stadium camp about the noise coming from that camp:

⁷⁷⁵ T-161 (Document of the detention premises, OG West, No. 331-2/94 dated 14 February 1994).

⁷⁷⁶ Hamid Đopa (13 January 2010).

⁷⁷⁷ Zijad Salkić (7 May 2008).

⁷⁷⁸ T-40 (Record of examination of witness Zijad Salkić, No. KT-RZ-125/07 dated 10 April 2007).

⁷⁷⁹ Zijad Salkić (7 May 2008).

It never happened during that time, as far as I know, the screaming, the beatings and the shouting, I heard this story before, that it happened at the beginning, when first detainees were brought there, the commotion and all that. This was a fabricated story. I will prove that during the period when I got there, the beginning of October, there was no such noise or shouting...⁷⁸⁰

609. When Nisvet Gasal assumed the duty of the warden of the FC *Iskra* stadium camp he was aware of the prisoner beatings, which is confirmed in his statement given to the Prosecutor's Office of BiH during the investigation.⁷⁸¹ Nisvet Gasal clearly and unequivocally stated:

[...] I came across many injured prisoners and prisoners in a poor physical shape. I inquired how those injuries were inflicted on them and I was told that some prisoners were ill-treated and tortured in the prison compound by the persons dressed in uniforms who would burst in during nighttime and physically ill-treat them...

610. Nisvet Gasal was evidently aware that the prisoners were beaten at the FC *Iskra* stadium camp when he assumed the duties of the camp warden. Therefore, he was expected to show particular interest in this issue and undertake necessary and reasonable measures to prevent such treatment of the detainees by the guards and other unidentified persons.

611. The Panel finds, based on the tendered evidence, that Nisvet Gasal failed to undertake the necessary and reasonable measures to prevent the abuse of prisoners in the camp by failing to punish or press charges against his subordinates and other perpetrators, although he knew that the prisoners were beaten in the camp during his tenure as the warden of the camp.

612. The Panel carefully considered the testimony of witness Ivica Klarić in this context,⁷⁸² given the importance of his allegations concerning Nisvet Gasal's knowledge about the beatings of the prisoners at the FC *Iskra* stadium camp.

613. Ivica Klarić testified that he was taken from the elementary school *Vojin Paleksić* to the FC *Iskra* stadium camp in mid-August 1993. He was taken to perform labor at Duratbegović Dolac in early September 1993 and returned to the camp

⁷⁸⁰ Nisvet Gasal (3 March 2010).

⁷⁸¹ T-631-a (Suspect examination record for Nisvet Gasal, Prosecutor's Office of BiH, No. KT-RZ-125/07 dated March 2007).

⁷⁸² Ivica Klarić (27 February 2008).

seven days later. In his detailed account of his imprisonment, Ivica Klarić also confirmed that the prisoners were allowed to request to be taken to the Health Center when they required medical assistance and that he was taken several times to the Health Center in Bugojno.⁷⁸³

614. In his testimony about the wardens of the FC *Iskra* stadium camp, Ivica Klarić stated that Ibro Letić and Meho Sadiković had been the wardens during the initial period of his detention and that Nisvet Gasal later assumed this duty.⁷⁸⁴

615. Ivica Klarić further stated that he had not known Nisvet Gasal from before and described in detail how he had learned that Nisvet Gasal was the warden at the FC *Iskra* stadium camp and the location of his office.⁷⁸⁵

616. The Panel has considered Ivica Klarić testimony in light of the evidence pertaining to the period before his detention at the FC *Iskra* stadium camp as well as other evidence pertaining to the camp, and finds that his testimony is consistent with the factual findings arising from the presented evidence. The Panel therefore gives credence to his testimony. Ivica Klarić's testimony is accurate and impartial and it does not diminish or exaggerate the role of the Accused during the relevant time.

617. In his testimony about the beating of the prisoners at the FC *Iskra* stadium camp, Ivica Klarić stated clearly and unequivocally that Kazimir Kaić, Ivica Lozančić, Niko Visković (aka Koni) and Željko Spremo were beaten in the camp during his detention. These persons were undoubtedly beaten during the period when Nisvet Gasal performed the duties of the warden of the FC *Iskra* stadium camp (paragraphs 475 - 476).

618. Ivica Klarić stated that Nisvet Gasal came the day after a number of individuals had been beaten, asked them to tell him who was responsible for the beating and assured them that it would not happen again. When asked by the Prosecutor if it happened again, Ivica Klarić stated clearly:

It happened again several times, even though the warden reacted in this way every time, I don't know how to describe it now, he said that it would not happen

⁷⁸³ Ivica Klarić (27 February 2008).

⁷⁸⁴ Ivica Klarić (27 February 2008).

⁷⁸⁵ Ivica Klarić (27 February 2008).

again and that we should tell him who did it. In my personal opinion he should have inquired with the guards as to who did what.⁷⁸⁶

619. He also stated that none of the prisoners revealed the identity of the persons who committed the beatings and corrected himself about the number of Nisvet Gasal's visits and stated that he came to the room in which he was detained on one such occasion after the detainees were beaten.⁷⁸⁷

620. It follows from the testimony of Ivica Klarić that Nisvet Gasal knew about the beatings of the prisoners at the FC *Iskra* stadium camp and that the beatings continued to take place even after his visits to the detainees.

621. In his statement to the Prosecutor's Office of BiH, Nisvet Gasal did not dispute the fact that the abuse of detainees continued even after he assumed the duty of the FC *Iskra* stadium camp warden.⁷⁸⁸ Nisvet Gasal stated the following:

I would like to note that some guards continued during my time with the same behavior in the prison (ill-treatment, black market, beatings), which I tried to prevent to the best of my abilities...

622. Gasal also described an alleged removal of one guard shift and some individuals who did not abide by the house rules.

623. In his statement as a suspect given to the Prosecutor's Office of BiH, Nisvet Gasal stated that he was informed of the beating of Kazimir Kaić, which will be explained below, as well as the beating of Željko Spremo. The Accused did not specify the measures he undertook to punish the perpetrators of this beating.⁷⁸⁹

624. Ilija Dujmović also testified about Nisvet Gasal's knowledge about the beatings at the FC *Iskra* stadium camp.⁷⁹⁰ He was brought from the Gymnasium to the FC *Iskra* stadium camp in early October 1993 and was beaten there (paragraph 561).

⁷⁸⁶ Ivica Klarić (27 February 2008).

⁷⁸⁷ Ivica Klarić (27 February 2008).

⁷⁸⁸ T-631-a (Record of examination of the suspect Nisvet Gasal, the Prosecutor's Office of BiH, No. KT-RZ-125/07 dated 29 March 2007).

⁷⁸⁹ T-631-b (Record of examination of the suspect Nisvet Gasal, the Prosecutor's Office of BiH, No. KT-RZ-125/07 dated 13 September 2007).

⁷⁹⁰ Ilija Dujmović (4 February 2009).

625. Due to his poor health, Ilija Dujmović was taken to the Health Center in Bugojno. He knew Nisvet Gasal from before and on one occasion Nisvet Gasal approached him in the camp and asked if he could help him in any way. Even though Ilija Dujmović did not request any assistance from Gasal, he believed that Nisvet Gasal helped him by putting him before other detainees when lists were made of detainees who needed to go to the Health Center.⁷⁹¹

626. When asked by the Prosecutor if he informed Nisvet Gasal on this occasion that people were beaten in the camp, Ilija Dujmović stated the following:

Witness : There was no need to say anything in my opinion.

Prosecutor: Why is that?

Witness: Well because it was obvious that people were beaten. People who resided in the neighbouring settlements knew about it, no one tried to hide it, it's not like someone brought a man to another room and beat him there, people were taken outside in front of the stadium, in front of the stands, and were beaten there.

Prosecutor: Considering that he was the prison warden, could he prevent it?

Witness: [incomprehensible] prevent it or not, I don't know, but he was a warden, they were their superiors, he could have exerted more influence on them, but he did not, on the other hand, that was the general atmosphere of the place, such things were not prevented, it was like 'well then, the man was beaten, what can we do now.'⁷⁹²

627. Ilija Dujmović also stated the following:

Prosecutor: Could you report those beatings to the guards, the warden or deputy warden?

Witness: Well, I think they knew about it, actually it is not only that I think, they could notice it during their visits, during the morning roll calls, they could notice on the people who were beaten up that they were beaten up and they knew about it, it was not kept secret, the guards were aware of it, some even took pride in it, for example, Đopa, Đopa, Đopa, Hamo Đopa, I think that was his name, he was a guard shift leader I think, beatings were most frequent in his shift, or happened very often.⁷⁹³

628. Zdravko Kezić, who was beaten together with Milenko Begić by unidentified persons in the camp during the relevant period (paragraphs 544 - 549), and whose

⁷⁹¹ Ilija Dujmović (4 February 2009).

⁷⁹² Ilija Dujmović (4 February 2009).

⁷⁹³ Ilija Dujmović (4 February 2009).

two teeth had been knocked out during the beating, which also left a scar on his face, stated the following when asked about the knowledge of the superior officers at the FC *Iskra* stadium camp about the beatings:

Defense Counsel: Alright, you did not complain to the guards, to the people who were superior to the guards at the stadium?

Witness: Their superiors saw it when they ventured out, they probably saw it, but ...⁷⁹⁴

629. Rade Marjanović stated the following about the beating of the prisoners Niko Visković and Kazimir Kaić at the FC *Iskra* stadium camp: “When this happened to Kajić and Visković, no one asked if they needed anything, I mean, everyone could see that they were not ok...”. Rade Marjanović added:

Defense Counsel: Do you know if these people could inform the warden that they were beaten, and whether they informed him?

Witness: Everyone learned about it the following day and the warden had to have known.

Defense Counsel: How do you explain this, that the warden had to have known?

Witness: Because we were locked up, not with one, but with two keys, the main entrance next to the classroom, Kukavica and Gasal know where it is, and the door of the corridor was locked, tell me if I am wrong. So one of these people who were direct subordinates to Kukavica or to Gasal must have let them in.

Defense Counsel: And based on that you formed your conclusion that Gasal had to have known?

Witness: Well, probably, he had to know what was going on in his house.⁷⁹⁵

630. Ilija Dujmović, Zdravko Kezić and Rade Marjanović testified about the situation during the relevant time at the FC *Iskra* stadium camp and were clear that the guards and the management of the camp led by Nisvet Gasal knew about the beatings of the prisoners at that time.

631. Enes Handžić corroborated their account and stated that on 1 November 1993 he received information that the members of the MUP shift were beating the prisoners.⁷⁹⁶ Enes Handžić recorded this information in his journal, which covers the

⁷⁹⁴ Zdravko Kezić (2 July 2008).

⁷⁹⁵ Rade Marjanović (11 March 2009).

⁷⁹⁶ Enes Handžić (28 June 2011).

relevant time.⁷⁹⁷ He stated that Nisvet Gasal never approached him with a request to remove the guards from the roster and never informed him, officially or off the record, about the beatings of prisoners at the FC *Iskra* stadium camp.⁷⁹⁸

632. Incidents of attempted revenge by some individuals,⁷⁹⁹ as well as incidents of prisoner beatings by guards⁸⁰⁰ and other unidentified persons⁸⁰¹ also occurred after Nisvet Gasal assumed the position of the camp warden (paragraphs 471 - 476).

633. Some of the persons who were guards at the FC *Iskra* stadium camp testified about the beatings which occurred there and stated that they knew that the beatings went on during the relevant time in the camp.⁸⁰² However, the evidence based on which the Panel drew its conclusions about the beatings of prisoners in the camp clearly show that these witnesses did not testify with utmost sincerity and did not reveal everything they knew about what happened. Testimony was offered with a view to help the Accused evade criminal liability.

634. For example, Hamid Đopa in his testimony stated that he told the management that he would take over the duty of a guard shift leader in early December 1993 only if the keys to the prison would be handed over to him when prisoners had finished their dinner.⁸⁰³ In his response to the questions of the Panel member as to why he made this ultimatum to the management, Hamid Đopa answered the following:

Witness Đopa: Since I became a guard shift leader, I wanted to protect myself. I wanted to do my job honorably and professionally, I said that I would accept to do this only if the keys were entrusted to me because then I would be sure that there could be no incidents.

Judge Samardžić: If no incidents occurred before, I do not understand your motive for such request?

Witness Đopa: I don't know about the others, the other guard shift leaders, how they did their job. I know how I did my job and I am ready to be held accountable

⁷⁹⁷ T-642 (Enes Handžić's journal, entry dated 1 November 1993).

⁷⁹⁸ Enes Handžić (15 June 2011).

⁷⁹⁹ Suvad Delić (13 January 2010).

⁸⁰⁰ Ivica Topić (5 March 2008); Kazimir Kaić (8 April 2009); Ilija Udovičić (3 September 2008).

⁸⁰¹ Ivica Klarić (27 February 2008); Zravko Kezić (2 July 2008).

⁸⁰² Suvad Delić (13 January 2010); Hamid Đopa (13 January 2010); Zijad Salkić (7 May 2008).

⁸⁰³ Hamid Đopa (13 January 2010).

for my actions and actions of my men after I was appointed the guard shift leader.

Judge Samardžić: We heard many testimonies about Salkić's shift and that there were no problems concerning the prisoners, that is why I am asking you this question?

Witness Đopa: In my shift there weren't any...

Judge Samardžić: That is why I'm asking you this.

Witness Đopa: Yes.

Judge Samardžić: Was there an additional motive, namely that you wanted to be 100 % sure, and that it was the reason why you wanted to keep the keys?

Witness Đopa: Well I saw guys who were in the shift I worked with before, police officers, the MUP guys, they did not fully respect the discipline.

Judge Samardžić: In what way did they not fully respect the discipline?

Witness Đopa: The prison management should specify that. I was just an ordinary guard at the time.⁸⁰⁴

635. It is obvious that Hamid Đopa avoided giving a full answer to this question. The Panel did not find his statements credible. The only reasons he would request that Nisvet Gasal give him the keys to the rooms is to prevent detainees of Croat ethnicity from being beaten. However, the Panel finds that keeping the keys was not an effective measure to prevent beatings.

636. Suvad Delić in his testimony about the last night of detention at the stadium camp stated the following: "[...] that night I took the keys of all those prison cells because I wanted to make sure that everything was secure, and that the people can leave, thank Goodness..."⁸⁰⁵ Although he claimed that he did not know that prisoners were beaten (except for the beatings that took place the night before the exchange),⁸⁰⁶ Suvad Delić took the keys in order to protect the prisoners in the camp, which establishes that he knew, beyond doubt, that the prisoners had been beaten in the past.

⁸⁰⁴ Hamid Đopa (13 January 2010).

⁸⁰⁵ Suvad Delić (13 January 2010).

⁸⁰⁶ Suvad Delić (13 January 2010).

637. In his testimony Nisvet Gasal stated that he was informed that the prisoners were beaten at the FC *Iskra* camp on two occasions. In addition to the beating that took place the night before the exchange (paragraphs 566 - 571) Nisvet Gasal stated that Musajb Kukavica had informed him about the beating of Kazimir Kaić (paragraphs 525 - 536). The MUP shift was allegedly responsible for the beating. Nisvet Gasal held a management meeting during which they prepared a proposal to remove this shift and submitted it to Senad Dautović, who was the Assistant Commander for Security in the OG West at the time. According to Nisvet Gasal, the MUP shift was removed from the guard roster.⁸⁰⁷

638. This fact was confirmed in the consistent testimony of Besim Cetin⁸⁰⁸ and Zdenko Ivoš.⁸⁰⁹ Hamid Đopa, a guard in the MUP shift, stated that all he could remember about the MUP shift was that it had always lacked discipline, that its members did not do everything the warden requested.⁸¹⁰

639. The Panel has compared the testimony of Nisvet Gasal to the testimony of Kazimir Kaić, the detainee who was beaten in the camp and whose beating prompted Nisvet Gasal to allegedly report the MUP shift to the security service of the OG West of the RBiH Army.

640. Kazimir Kaić recalled very well that Mirsad Ćefo was present during his beating. Kazimir Kaić recognized him and was 100% sure that this person had participated in his beating.⁸¹¹ It follows from exhibits T-511 and T-512 (lists of names of the OG West members as at 5 February 1994 and 4 March 1994), which include the list of the security personnel in the prison, that Mirsad Ćefo continued to serve as the guard at the FC *Iskra* camp until at least 4 March 1994, following this incident.⁸¹² The Panel finds, based on the testimony of Kazimir Kaić, that he was never

⁸⁰⁷ Nisvet Gasal (17 February 2010).

⁸⁰⁸ Besim Cetin (3 February 2010).

⁸⁰⁹ Zdenko Ivoš (10 February 2010).

⁸¹⁰ Hamid Đopa (13 January 2010).

⁸¹¹ Kazimir Kaić (8 April 2009).

⁸¹² T-511 (List of members of the OG West dated 9 February 1994); T-512 (List of members of the OG West dated 4 March 1994).

interviewed by the camp management, or any other authority or official, about the beatings at the FC *Iskra* camp.⁸¹³

641. Nisvet Gasal knew that Kazimir Kaić was beaten. In exhibit No. T-631-b (Record of the examination of the suspect Nisvet Gasal) the Accused stated that a guard, Mirsad Ćefo, beat detainee Kazimir Kaić. If so, based on the above mentioned evidence, it is obvious that he did not punish this person or report him to the relevant authority to be sanctioned.⁸¹⁴

642. The Panel, therefore, could not establish, based on the evidence, the real reason for the removal of the MUP shift. The Panel finds that Musajb Kukavica informed Nisvet Gasal about this beating. Even though Nisvet Gasal claimed that he undertook actions to sanction the MUP shift, no evidence corroborates his claim.

643. Ivoš Zdenko, witness for the defense of Nisvet Gasal, testified about the beatings of prisoners at the FC *Iskra* stadium camp and gave a detailed description of Kaić and Lozić's beatings which was consistent with the description provided by Nisvet Gasal.⁸¹⁵

644. Ivoš Zdenko did not testify about any other beatings of the prisoners in the camp, as established in paragraphs 522 - 571, and his knowledge about the alleged removal of the MUP shift because of the beating of Kazimir Kaić is suspicious.⁸¹⁶

645. Having compared the testimony of Ivoš Zdenko with the testimony of other witnesses who testified about the beatings of the detainees in the camp, given the time span between the relevant events and his testimony before the court, the Panel notes that he knew more about these occurrences than other witnesses. Ivoš Zdenko also provided more information about the alleged sanctioning of the MUP shift than Hamid Đopa, who was also a guard in the MUP shift.

⁸¹³ Kazimir Kaić (8 April 2009).

⁸¹⁴ T-631-b (Record on examination of the suspect Nisvet Gasal, Prosecutor's Office of BiH, No. KT-RZ-125/07 dated 13 September 2007).

⁸¹⁵ Zdenko Ivoš (10 February 2010).

⁸¹⁶ Zdenko Ivoš (10 February 2010).

646. It is obvious that the testimony of Ivoš Zdenko was calculated to diminish Nisvet Gasal's responsibility. Therefore, the Panel did not find his testimony about the beatings of the prisoners at the FC *Iskra* stadium camp to be credible.

VIII. INDIVIDUAL CRIMINAL RESPONSIBILITY OF THE ACCUSED

A. SENAD DAUTOVIĆ

1. Introduction

(a) Whereby the Accused Senad Dautović perpetrated the criminal offence of War Crimes against Civilians in violation of Article 173 CC of BiH by way of acts specified in Article 173 (1) c as read with Article 180(1) and 180(2)

647. The Panel finds that the Accused committed a series of offenses (all defined in Article 173(1)(c) through three distinct modes of liability. First, he is held accountable as a member of two different joint criminal enterprises. Second, he is held accountable for direct acts of commission. Third, he is held accountable for specific acts under the doctrine of command responsibility.

648. The Panel finds that Prosecution has proved beyond a reasonable doubt that the Accused, Senad Dautović, perpetrated the criminal offence of War Crimes against Civilians in violation of Article 173 CC of BiH by way of acts specified in Article 173(1)(c) as read with Article 180(1) and 180(2).

649. The Panel will first look at the mode of liability and make findings on the participation of the Accused pursuant to the mode of liability and the specific offense.

2. Joint Criminal Enterprise

650. The Panel finds the Accused perpetrated offenses through his participation in two separate and distinct joint criminal enterprises. The Panel recalls Article 180(1) of CC of BiH is derived from and is identical to Article 7(1) of the ICTY Statute. Article 180(1) became part of the CC of BiH after Article 7(1) had been enacted and interpreted by the ICTY to include, specifically, joint criminal enterprise as a mode of co-perpetration by which personal criminal liability would attach.⁸¹⁷

⁸¹⁷ *Rašević and Todović* First Instance Verdict, p. 103.

651. The Panel recalls the requisite elements necessary to prove the basic form of joint criminal enterprise liability are a plurality of persons, a common plan or purpose to commit a crime, and the participation or joining in of the accused in the furtherance of the plan or purpose.⁸¹⁸ The accused must both intend the commission of the crime and intend to participate in the common plan aimed at its commission to be held liable for the basic form of joint criminal enterprise.⁸¹⁹

652. The Panel will first look at the mode of liability and make findings on the participation of the Accused in a joint criminal enterprise. The Panel will then look at the underlying offences.

(a) The Crime: Killings

(i) Introduction

a. Dautović Senad, as a member of the joint criminal enterprise, significantly contributed by his acts and failure to act to the execution of the common plan to commit the criminal offence of murder

(ii) Actus Reus

a. Plurality of persons

653. The plurality of persons who participated in the realization of the common plan to commit murder included both the civilian and military members who participated in the work of the Wartime Presidency of the Bugojno municipality. The Wartime Presidency was established pursuant to existing law (paragraph 212) in the period before the conflict between the ARBiH and HVO in Bugojno. Under the direction and leadership of Chairman Dževad Mlaćo,⁸²⁰ the group consisting of at least three members acted together and in concert to determine policies and procedures related to the operation of the municipality. In addition to regularly appointed members,

⁸¹⁸ *Rašević and Todović* First Instance Verdict, paras 215 – 220.

⁸¹⁹ *Rašević and Todović* First Instance Verdict, para. 221.

⁸²⁰ Dževad Mlaćo (24 March 2010); Enes Handžić (1 June 2011); Miroslav Zelić (20 February 2008); Ivo Mršo (22 October 2008).

some members of the military were occasionally present and participated as needed in specific discussions.⁸²¹

654. The Panel's review of the evidence revealed that the Wartime Presidency was composed of members of the civilian and military organizations. In Bugojno it served a unique function because, for part of its tenure, it assumed responsibilities reserved solely for the military. The unique role of this Wartime Presidency is at the core of both joint criminal enterprises in which the Accused was involved.

655. The Panel's review of the evidence, which focused on the Accused, revealed a consistent group of actors, including members of the Wartime Presidency, and members of the military. The plurality of persons who participated in the common plan included Mlaćo, Tahir Ganić and Senad Dautović. Dževad Mlaćo was the Chair of the Wartime Presidency, and was perceived by many in Bugojno to be a powerful leader.⁸²² Ganić was the commander of the 307th Brigade and his subordinates were used to implement the plan. Dautović was the representative of the civilian police. The actual operations of the Wartime Presidency, however, violated the principle of military command and called into question the role of military personnel who were present at these meetings, including Selmo Cikotić.⁸²³

656. The Panel's review of the evidence in this case, which focused on this Accused, revealed a consistent and core group of actors as defined above. It became apparent to the Panel that Mlaćo had tremendous influence over the other members as well as the local military.⁸²⁴ The Panel recalls, for example, that on 17 August 1993 Dževad Mlaćo prevented detainees from being transferred to Zenica to face prosecution.⁸²⁵ He also assigned Enes Handžić, Assistant Commander for Security in the 307th Motorized Brigade of the ARBiH, the task of finding a location where the group of "the most extremist persons" would be taken.⁸²⁶

657. A review of the evidence of the joint criminal enterprises involved in this case shows that the names of some actors are repeated frequently. It is not the repetition

⁸²¹ Selmo Cikotić (21 April 2010); Abdulah Jeleč (10 November 2010).

⁸²² Ivo Mršo (22 October 2008); Janko Ljubos (4 February 2009); Tomislav Turalija (25 February 2009).

⁸²³ O-8/3 (Finding and Opinion of the expert witness Fikret Muslimović).

⁸²⁴ O-8/3 (Finding and Opinion of the expert witness Fikret Muslimović).

⁸²⁵ Enes Handžić (1 June 2011); Nermin Aliefendić (12 May 2010).

alone which defines membership, but rather the extent and type of interaction and participation. The Panel recognizes there are other names also mentioned in the evidence. The Panel notes according to ICTY jurisprudence it is not necessary that the Panel identifies each of the persons involved by name.⁸²⁷ The Panel acknowledges that there may be other individuals involved, but the evidence necessary to prove such involvement is not before this court.

658. The Panel has been furnished with a substantial amount of evidence that identifies the key actors and establishes the existence of a plurality of persons. The findings of the Panel relative to this determination are stated in paragraph 655. The plurality of persons who participated in the realization of a common purpose and plan include at least three persons: Dževad Mlaćo, Senad Dautović and Tahir Granić. This list is not exhaustive.

b. Common plan or purpose

659. The Panel recalls that the basic form of a joint criminal enterprise requires the existence of a common purpose, which amounts to or involves the commission of a crime provided for in the CC of BiH.⁸²⁸ There is no necessity for this plan, design, or purpose to have been previously arranged or formulated. It may materialize extemporaneously and be inferred from the fact that a plurality of persons acts in unison to put into effect a joint criminal enterprise.⁸²⁹ In *Brđanin* the ICTY Appeals Chamber explained that in order to establish this element the Trial Chamber must “specify the common criminal purpose in terms of both the criminal goal intended and its scope (for example, the temporal and geographic limits of this goal, and the general identities of the intended victims)”.⁸³⁰ Additionally, the Trial Chamber must “make a finding that this criminal purpose is not merely the same, but also common to all of the persons acting together within a joint criminal enterprise”.⁸³¹

⁸²⁶ Enes Handžić (1 June 2011).

⁸²⁷ *Krajišnik* Appeal Judgment, para. 156.

⁸²⁸ See paragraph 182.

⁸²⁹ See generally *Krnjelac* Appeal Judgment, para. 31; *Vasiljevic* Appeal Judgment, para. 100.

⁸³⁰ *Brđanin* Appeal Judgment, para. 430.

⁸³¹ *Brđanin* Appeal Judgment, para. 430 citing *Stakić* Appeal Judgment, para. 69.

660. The Prosecution alleged a larger joint criminal enterprise that covered detainee killings, unlawful detention as well as the treatment detainees received at the sites where they were held (including the stadium), to include their detention in inadequate premises, torture, the forced labour they engaged in under coercive pressure, and the inhuman and cruel treatment they experienced.

661. The Panel finds, however, that the breadth and scope of the crimes charged in the Amended Indictment is overbroad and impermissibly large for this Accused. The Panel views the overall plan, as presented by the Prosecution, to be overly broad and not proved beyond a reasonable doubt.

662. Based on the evidence, the Panel has narrowed the scope of the common plan involved in this case to be a joint criminal enterprise to identify those detainees of Croat ethnicity who were believed to be extremists and to kill them.

663. In the months leading up to the conflict, witnesses noted that extremists on both sides committed criminal acts and perpetuated community unrest. This culminated in two tragic incidents. The first was the burning of the Muslim village Vrbanja, which resulted in many casualties. The other involved the killing of two Croat policemen, members of the joint patrols of the MUP.⁸³²

664. The testimony of witnesses establishes that there was a belief that one of the causes of the conflict was the actions of a few. This belief, held by persons in authority, is at the heart of the plan to kill the extremists.

665. On 22 July, prior to the resolution of the conflict, a meeting of the Wartime Presidency was held. Mlaćo's journal lists Dautović as present at this meeting.⁸³³ It was decided at this meeting that plans needed to be drawn up to separate civilians from prisoners of war and for the extremists among them to be exterminated.⁸³⁴ Although specific details were not given as to how this was to be accomplished, it is clear that, from this moment forward, the participants were jointly involved in the completion of this plan. Plans were also made to make additional decisions in

⁸³² Josip Čubela (15 October 2008).

⁸³³ T-640 (Dževad Mlaćo's journal, entry of 22 July 1993).

⁸³⁴ T-640 (Dževad Mlaćo's journal, entry of 22 July 1993).

furtherance of the common purpose outside of the formal meeting structure through phone calls and private meetings.

666. The 22 July meeting was a moment when true leadership was needed by the Wartime Presidency and others to encourage lawful behaviour during this time of great anger, violence, and stress. In this the Wartime Presidency failed, instead using its authority to undermine and destroy the rule of law. The subsequent unlawful actions flowed directly from the decisions made in this moment of failed leadership.

667. The Panel finds that the objective of the common plan was to kill the extremists. There is no evidence to show that at the time the plan was formulated the participants had actual knowledge as to who the extremists actually were, however, subsequent actions (i.e. repeated or lengthy interrogations), orchestrated primarily by members of the military, led to the identification of between 23 and 26 extremists (paragraph 267). The indictment charges Dautović with criminal responsibility for the subsequent deaths of 18 Bosnian Croats, all of whom were members of the group that had been identified as extremists. These killings were intentional.⁸³⁵ Further, the process of selection of the victims, the circumstances of their murder, the efforts to conceal evidence and the subsequent removal of the bodies demonstrate that a coordinated effort accompanied the commission of these crimes.

668. The Panel acknowledges the possibility of a wider criminal enterprise. However the Panel must focus on the actions and accountability for the Accused only and, as such, has narrowed the larger joint criminal enterprise alleged by the Prosecution to Dautović's involvement in two smaller joint criminal enterprises.

669. The Panel considers the fact that the men were killed proved beyond a reasonable doubt. The remains of three persons have been located pursuant to the plea bargain of Enes Handžić. Their identity has not been established yet. But the remainder are still missing. No one has produced any evidence that the missing individuals have survived. After 18 years all of the missing are presumed to be dead.

⁸³⁵ T-640 (Dževad Mlaćo's journal, entry of 22 July 1993); Enes Handžić (1 June 2011), (15 June 2011), (28 June 2011).

670. In *Brđanin* the ICTY Appeals Chambers emphasized the importance in establishing the existence of a joint criminal enterprise of ensuring that the “contours of the common criminal purpose have been properly defined”.⁸³⁶ The Panel finds that there existed an impermissible relationship between the Wartime Presidency and the military. However the joint criminal enterprise is limited to their partnership in furtherance of two specific unlawful goals. Further, the Panel finds that these unlawful goals, narrowed in scope to the two specific crimes involving Dautović, encompassed the actions of the Accused.

671. The Panel recalls it must also make a finding that the criminal purpose is not merely the same, but also common to all of the persons acting together within a joint criminal enterprise. The Appeals Chamber of the Special Court of Sierra Leone in *Sesay et al.*, listed factors derived from ICTY jurisprudence relevant to this determination.⁸³⁷ These factors include but are not limited to: the manner and degree of interaction, cooperation, and communication (joint action) between those persons;⁸³⁸ the manner and degree of mutual reliance by those persons on each other’s contributions to achieve criminal objectives that they could not have achieved alone;⁸³⁹ the existence of a joint decision-making structure;⁸⁴⁰ the degree and character of dissension; and the scope of any joint action as compared to the scope of the alleged common criminal purpose.⁸⁴¹ The Panel must find that the persons alleged to constitute a plurality of persons joined together to achieve their common goal.⁸⁴² The factors mentioned above will be used to establish that Dautović shared with Dževad Mlaćo, Tahir Granić and others a common criminal purpose.

672. As will be established below members of both the military and the Wartime Presidency interacted, cooperated, and communicated with each other at meetings,

⁸³⁶ *Brđanin* Appeal Judgment, para. 424.

⁸³⁷ *Sesay* Appeal Judgment, para. 1141.

⁸³⁸ *Brđanin* Appeal Judgment, para. 410 (holding that whether a crime forms part of the common purpose may be inferred from the “fact that the accused or any other member of the JOINT CRIMINAL ENTERPRISE closely cooperated with the principle perpetrator in order to further common criminal purpose”); *Krajišnik* Trial Judgment, para. 884.

⁸³⁹ *Krajišnik* Trial Judgment, para. 1082.

⁸⁴⁰ That the plurality of persons “need not be organized in a military, political or administrative structure” as a matter of law does not imply that the presence or absence of such a structure is not a relevant evidentiary consideration. *Vasiljević* Appeal Judgment, para. 100; *Tadić* Appeal Judgment, para. 227.

⁸⁴¹ *Brđanin* Appeal Judgment, para. 430 (the trier of fact must “specify the common criminal purpose in terms of both the criminal goal intended and its scope (for example, the temporal and geographic limits of this goal, and the general identities of the intended victims”).

by telephone, and in person continuously throughout the time frame of this enterprise. The findings below show the manner and degree of interaction, and the cooperation and communication between them;⁸⁴³ and the manner and degree of mutual reliance on each other's contributions to achieve criminal objectives that they could not have achieved alone.

673. An entry in Mlaćo's journal from 22 July 1993 reads "[...] Secretly - extremists among the captured soldiers are to be liquidated". This indicates that the earliest date of Dautović's involvement in the common plan was 22 July 1993.

674. The evidence provided by the Mlaćo journal also establishes the manner and degree of interaction as well as the co-operation and communication between members of the Wartime Presidency which continued throughout the entire period. The objectives of the group could not have been achieved by individuals acting alone. In order to accomplish their common goal the participants needed to rely on each other. Senad Dautović attended the session of the Wartime Presidency and approved of the plan by remaining silent. He was a guarantee that no action would be taken to prevent or to sanction direct perpetrators of the liquidation of persons believed to be extremists. Based on the adduced evidence, the military component, more specifically the members of the Military Police of the 307th Motorized Brigade of the ARBiH, were responsible for the implementation of the common plan and purpose of this joint criminal enterprise (paragraph 269). This degree of mutual reliance was critical to the success of the common goal. They relied on each other's contributions as well as their silence to achieve the common goal. In particular, to be successful, the plan required Dautović's silent agreement not to interfere or investigate the disappearances.

675. Other factors which show a common plan are the existence of a joint decision-making structure;⁸⁴⁴ the degree and character of dissension; and the scope of any joint action as compared to the scope of the alleged common criminal purpose. The

⁸⁴² *Martić* Appeal Judgment, para. 172; *Brđanin* Appeal Judgment, para. 431.

⁸⁴³ *Brđanin* Appeal Judgment, para. 410 (holding that whether a crime forms part of the common purpose may be inferred from the "fact that the accused or any other member of the JCE closely cooperated with the principle perpetrator in order to further common criminal purpose"); *Krajišnik* Trial Judgment, para. 884.

evidence indicates there was no dissent or disagreement between the participants during this operation. In this instance, the scope of their activities fit into the scope of the joint criminal enterprise. The contours were the same. Again, as explained earlier, some of the participants may have been actors in other criminal enterprises, but that has not been found for this Accused.

676. Based on all of the factors above the Panel finds that this criminal purpose was not merely the same, but also common to and shared by Dževad Mlaćo, Senad Dautović, Tahir Granić and others acting together within a joint criminal enterprise.

c. Participation

677. The *actus reus* also requires participation by the accused in the common purpose involving the perpetration of a crime provided for in the CC of BiH. This participation need not involve direct commission of a specific crime under one of the provisions of the CC (i.e. murder, extermination, torture, rape), but may take the form of assistance in, or contribution to, the execution of the common plan or purpose to commit the specific criminal act. The contribution need not be necessary or substantial, but must, at least, be a significant contribution to the crimes for which the accused is found responsible.⁸⁴⁵

678. The Panel recalls a person who participates in a joint criminal enterprise in any of the following ways may be found guilty for the crime committed, all other conditions being met.⁸⁴⁶

- (i) by participating directly in the commission of the agreed crime itself (as a principal offender);
- (ii) by being present at the time when the crime is committed, and (with knowledge that the crime is to be or is being committed) by intentionally assisting or encouraging another participant in the joint criminal enterprise to commit that crime; or
- (iii) by acting in furtherance of a particular system in which the crime is committed by reason of the accused's position of authority or function, and with knowledge of the nature of that system and intent to further that system.

⁸⁴⁴ That the plurality of persons "need not be organized in a military, political or administrative structure" as a matter of law does not imply that the presence or absence of such a structure is not a relevant evidentiary consideration. *Vasiljević* Appeal Judgment, para. 100; *Tadić* Appeal Judgment, para. 227.

⁸⁴⁵ *Brđanin* Appeal Judgment, para. 414; *Krajišnik*, Appeal Judgment, para. 215.

⁸⁴⁶ *Krnojelac* Trial Judgment, para. 81.

679. This list is not necessarily exhaustive. The ICTY Appeals Chamber in *Vasiljević* explained that it is generally sufficient for a participant in a joint criminal enterprise to perform acts that in some way are directed to the furtherance of the common design.⁸⁴⁷ If the agreed crime is committed by one or another of the participants in the joint criminal enterprise, all of the participants in the enterprise are guilty of the crime regardless of the part played by each in its commission.⁸⁴⁸ However, all persons (principal perpetrators) who carry out the *actus reus* of the crimes do not have to be members of a joint criminal enterprise.⁸⁴⁹

680. It is not necessary that the accused be present when the crime is committed in order to be guilty of the crime as a member of the joint criminal enterprise.⁸⁵⁰ An accused or another member of a joint criminal enterprise may use the principal perpetrators to carry the *actus reus* of a crime,⁸⁵¹ however, “an essential requirement in order to impute to any accused member of the joint criminal enterprise liability for a crime committed by another person is that the crime in question forms part of the common criminal purpose”.⁸⁵² The requisite level of common criminal purpose maybe inferred, *inter alia*, from the fact that “the accused or any other member of the joint criminal enterprise closely cooperated with the principal perpetrator in order to further the common criminal purpose”.⁸⁵³

681. In order to find that an individual accused was involved in a joint criminal enterprise, it is necessary to find “participation by the accused, which may take the form of assistance in, or contribution to, the execution of the common purpose”.⁸⁵⁴ The following section focus on the Accused’s direct perpetration, assistance in, and contribution to the achievement of the common purpose.

682. Senad Dautović is found to have participated in a joint criminal enterprise in the manner described in the operative part of the verdict, which is to say, not the

⁸⁴⁷ *Vasiljevic* Appeal Judgment, para. 102.

⁸⁴⁸ *Krnojelac* Trial Judgment, para. 82.

⁸⁴⁹ *Brđanin* Appeal Judgment, para. 414.

⁸⁵⁰ *Krnojelac* Appeal Judgment, para. 81.

⁸⁵¹ *Martić* Appeal Judgment, para. 68 *citing Martić* Trial Judgment, para. 438.

⁸⁵² *Martić* Appeal Judgment, para. 68 *citing Martić* Trial Judgment, para. 438; *Brđanin* Appeal Judgment, para. 418.

⁸⁵³ *Martić* Appeal Judgment, para. 68 *citing Martić* Trial Judgment, para. 438; *Brđanin* Appeal Judgment, para. 410.

⁸⁵⁴ *Brđanin* Appeal Judgment, para. 424.

manner described in the Amended Indictment. The Panel concludes that the Prosecution was correct in assessing Dautović as a member of a joint criminal enterprise. The evidence shows that, while Dautović may not have been a principal planner or perpetrator, his failure to act was a significant contribution and allowed the plan to move forward.

683. The ICTY has held that “crimes might have been committed by omission”.⁸⁵⁵ Senad Dautović has been found to have participated directly in a joint criminal enterprise by way of omission. Although he did not lend direct material assistance to the joint criminal enterprise, he participated in it and contributed to the achievement of its objective by forgoing his duty to act.

684. By virtue of his position as Chief of Police, Dautović was a member of the Wartime Presidency of Bugojno. He was a professional and, despite his young age, was charged with significant responsibilities.

3. Legal Duty to Act

685. Senad Dautovic had a clear duty to act under the presented circumstances. The Panel found Mile Matijevic presented expert testimony explaining that the police were charged with the security of its citizens. Furthermore, they responsible for public law and order. Lastly, they retained their competencies during war time.⁸⁵⁶

686. Speaking specifically about the duty of the police he explained:

After cessation of the combats in Bugojno, the police officers of the PSS Bugojno were engaged in establishing the public peace and order, providing the protection to citizens who were exposed to the unlawful activities of uncontrolled groups and individuals, prevention against criminal offenses commission, disclosing perpetrators of the criminal offenses, their criminal processing and filing criminal reports against them with the responsible prosecutor’s office, particularly discovering the criminal offenses of murder, robberies, thefts, rapes, etc. to the detriment of Croat citizens. Perpetrators of the foregoing criminal offenses, whose identity was unknown at the moment of perpetration, were intensively searched for.⁸⁵⁷

⁸⁵⁵ *Brđanin* Appeal Judgment, para. 362.

⁸⁵⁶ O-35/4 (Finding and opinion of expert witness Mile Matijević).

⁸⁵⁷ O-35/4 (Finding and opinion of expert witness Mile Matijević).

687. It is important to understand that the duties and job description of the various authorities of the RBiH continued pursuant to the regulations of the former SFRY and the former SRBiH (Socialist Republic of Bosnia and Herzegovina). Authorities were obligated to act in compliance with these regulations in the execution of their jobs and tasks.⁸⁵⁸

688. Therefore the Chief of Police and the Public Security Service continued acting pursuant to the provisions of the then Law on Internal Affairs,⁸⁵⁹ the Criminal Procedure Code, the Administrative Procedure Code, the Law on Minor Offenses, the Law on Procurement, Keeping and Carrying Weapons, etc.⁸⁶⁰

689. This also held true when it came to the direct execution of tasks by the police. The Police acted in compliance with the provisions of the Book of Rules on the Manner of Operations of the Public Security Service⁸⁶¹ that was in effect prior to the conflict outbreak.⁸⁶²

690. The Book of Rules not only prescribed the powers of the Police but it also contained the rules on mutual relations (Code of Conduct). It was a guide for the correct acting of each police officer and managing person.⁸⁶³

691. The following is taken from Majetic's report:

During armed conflicts the competence of the civilian police does not change essentially when compared to peacetime conditions. However, the manner of work and execution of tasks and assignments in times of armed conflict changes significantly. During the armed conflicts the civilian police, among other things, undertakes activities to attempt to eliminate the causes which led to the conflict. It works together with other organs, works jointly with the Army units in combating the enemy, intensively works on preventing subversive enemy activities (sabotage, enemy propaganda and similar), works on detecting and eliminating infiltrated sabotage-terrorist groups and the remainder of the enemy forces, prevents illegal traffic, detects, locates and catches deserters and through increased activity and intense work protects the property and lives of citizens.

⁸⁵⁸ O-35/4 (Finding and opinion of expert witness Mile Matijević).

⁸⁵⁹ Law on Internal Affairs SR BiH (Official Gazette No.18 dated 29 June 1990)

⁸⁶⁰ O-35/4 (Finding and opinion of expert witness Mile Matijević).

⁸⁶¹ Book of Rules on the Manner of Operations of the Public Security Station (Official Gazette SR BiH No. 24/77 dated 11 August 1977).

⁸⁶² O-35/4 (Finding and opinion of expert witness Mile Matijević).

⁸⁶³ O-35/4 (Finding and opinion of expert witness Mile Matijević).

692. During the time of war, police units can be subordinated to the Army, in which case they are placed under the single units command they are subordinated to.⁸⁶⁴ In practice this means that the subordinated police units or seconded police members are completely beyond the competence of the senior police officials, in other words, during the secondment the police members are commanded by the commander of the unit they are seconded to. This same commander is authorized to undertake all lawful measures not only in respect to the members of the Army unit he is in charge of but also to the police members should they violate the regulations.

693. Dautovic specifically was required to act in compliance with the Law on Internal Affairs of the RBiH⁸⁶⁵ and the Rulebook on Internal Organization and Systematization of Work Posts of the RBiH Ministry of Interior. The Public Security Station Chief organizes, directs, commands and controls the work of the employees within the Public Security Station directly and through the senior police officials leading the internal organizational units of the Public Security Station (commander of the police station, leader of the Crime Prevention Department, leader of general, legal and joint affairs) in accordance with the applicable law and by-laws adopted by the competent authorities in accordance with the law (orders, instructions, guidelines and similar).⁸⁶⁶

694. Finally Matijevic noted “that the tasks and assignments of the police, that is, the tasks and assignments executed by the authorized officials are clearly prescribed under the Law on Internal Affairs and other laws and authorized officials of the internal affairs organs are under the obligation to execute them even without an order (protection of property and lives of citizens, prevention of criminal offences and violations et cetera)”⁸⁶⁷.

695. None of these rules or obligations allowed Dautovic to participate in murder, summary executions or in the cover up of these crimes. These crimes are inconsistent with the duties of a chief of police.

⁸⁶⁴ Decree with the Force of Law on RBiH Armed Forces – Article 7 (Official Gazette RBiH No. 4 of 20 May 1992).

⁸⁶⁵ Law on Internal Affairs (Official Gazette SRBiH No. 18 of 29 June 1990).

⁸⁶⁶ O-35/4 (Finding and opinion of expert witness Mile Matijević).

⁸⁶⁷ O-35/4 (Finding and opinion of expert witness Mile Matijević).

696. It was Dautović's duty to report criminal activity of which he became aware to his superiors. It was also his duty to generally take the actions necessary to prevent crime and ensure the safety of all the citizens of Bugojno, regardless of their ethnicity.

697. There is no evidence in the record to indicate that Senad Dautović fulfilled any of his responsibilities as Chief of Police in regard to the Bosnian Croat men who were killed, and, on this point, the absence of evidence is significant. Where an affirmative duty to act exists, it is impermissible to knowingly fail to act. Dautović's obligation was to protect these men from vigilante justice, not to participate in it by standing by in silence.

698. The Panel recalls that the *actus reus* for killing is described in paragraphs 139 - 140 and 143. The findings above confirm the essential elements of this offense are met.

(i) Mens Rea

699. The requisite *mens rea* for basic joint criminal enterprise is that the accused must both intend the commission of the crime (this being the shared intent on the part of all co-perpetrators)⁸⁶⁸ and intend to participate in a common plan aimed at its commission.⁸⁶⁹ If the common criminal purpose involves commission of a crime that requires specific intent, for example, persecution, then the participant must share that specific intent.⁸⁷⁰ Shared intent, even specific intent, may be inferred.⁸⁷¹

700. In relation to joint criminal enterprise shared intent, the ICTY has held that "knowledge combined with continuing participation can be conclusive as to a person's intent".⁸⁷² As the intent of the participants in the joint criminal enterprise in this case was murder, reference is made in following section which addresses the Panel's conclusion that the Accused possessed the *mens rea* necessary for this

⁸⁶⁸ *Vasiljevic* Appeal Judgment, paras 97 & 101; *Krnjelac* Appeal Judgment, para. 31 (emphasis added).

⁸⁶⁹ *Brđanin* Appeal Judgment, para. 356 citing *Kvočka* Appeal Judgment, para. 82 (requiring "intent to effect the common purpose").

⁸⁷⁰ *Kvočka* Trial Judgment, para. 288.

⁸⁷¹ *Kvočka* Trial Judgment, para. 288.

⁸⁷² *Krajišnik* Appeal Judgment, paras 684 & 697.

offense. The Panel will focus below on the intent of the Accused to participate in the common plan aimed at its commission.

701. Dautović was present at the initial meeting and therefore had direct knowledge of the common plan and purpose of the group. The Panel finds that direct knowledge, coupled with his subsequent failure to object or take action to prevent the killings, demonstrates that Dautović intended to participate in a common plan aimed at their commission. The Panel recalls that the intent necessary for the crime of killing was discussed in paragraph 143. This failure to act also demonstrates the intent necessary for the commission of the underlying offense of murder.

(ii) Conclusion

702. The extent of his failure to act as well as the evidence as to his silent participation and consent compels the Panel to find that the Accused joined in the plan and shared the objective of the plan with the key players of the Wartime Presidency. He intended to participate in the common plan aimed at its commission, and continued to significantly contribute to its completion by his ongoing silence. He also intended the commission of the crime. It is these factors that give rise to the finding of his participation in the joint criminal enterprise. Any other mode of liability would not cover the breadth of his actions. He was not a mere instrument used by the planners and therefore not a member of the joint criminal enterprise. Nor was he simply the victim of bad luck, an individual in the wrong place at the wrong time. He held a position of responsibility in the community. His participation was significant and at times even crucial to the success of the overall plan.

(b) The Crime: Forcible Taking of Blood (Inhuman Treatment)

(i) Introduction

a. Accused Senad Dautović, as one of the commanders of the Unified Command of the Army of RBiH Bugojno - Defense of the Bugojno Town and Chief of SJB Bugojno, by the nature of which position he was a member of the Bugojno Municipality Wartime Presidency, knowingly and with the intention of executing the common purpose and plan of the joint criminal enterprise which he joined, knew that the detainees in the Furniture Salon and that the detainees in the SJB Bugojno were forced to donate blood in the manner described above, with his participation in the joint criminal enterprise by his acts and failure to act, he significantly contributed to this joint criminal enterprise

703. Senad Dautović is also found to be individually criminally responsible for his participation in a lesser joint criminal enterprise involving the forced taking of blood from detainees. The Panel incorporates without reiterating it here the basic legal analysis of joint criminal enterprise set out above, and makes findings on the necessary legal elements as to this particular joint criminal enterprise.

(ii) Actus Reus

a. Plurality of Persons

704. The plurality of persons who participated in the realization of this common plan is the same as noted above. Here Dautović once again utilized the military subordinates of Tahir Ganić to carry out the criminal plan. Dautović himself had no authority to issue orders to members of the military. The fact that members of the military were taking detainees from the Gymnasium and Bugojno SJB to give blood, as well as the fact that the blood was drawn from detainees taken from the furniture salon that was under military control, necessarily implicates Tahir Granić in this JCE.

b. Common Plan or Purpose

705. The common plan here was simple. The evidence indicates that there was a shortage of blood in the Bugojno area. The area had been under siege for some time and the ARBiH had been engaged in an extensive conflict not just in the Bugojno area but in the broader territory.⁸⁷³ A general request for civilians to donate blood had been issued using the local radio station.⁸⁷⁴ The Wartime Presidency was responsible for securing the blood supply. At the meeting on 14 August 1993 it was decided that Dautović would be in charge of this task. Based on the established state of facts,⁸⁷⁵ the Panel concludes that it was agreed that detainees would be used for this purpose.

c. Participation

706. The evidence establishes Dautović's participation in this joint criminal enterprise. He was placed in charge of the task and accepted this role. He participated directly in the commission of the crime. As the facts indicate, the selection of detainees was deliberate. The specific detainees from whom blood was to be taken were selected on the basis of their blood type. This information was obtained prior to selection and thus detainees were specifically targeted.

(iii) Mens Rea

707. Dautović's intent here is established by the evidence. At the meeting of 14 August 1993 he accepted primary responsibility for securing the blood supply by using detainees. By doing so, he formed the intent to commit the crime and to participate in the common plan aimed at its commission.

708. Dautović, as the implementer of the plan, put into effect the necessary orders to facilitate the collection of blood. Both civilian officers under Dautović's control and members of the military were employed to bring detainees to the Health Center. The members of the military could only have been utilized by Dautović with the

⁸⁷³ Selmo Cikotić (28 April 2010), (20 April 2011); Eniz Rujanac (10 November 2011).

⁸⁷⁴ T-640 (Dževad Mlačo's journal, entry dated 25 July 1993).

⁸⁷⁵ See paragraphs 321 - 380.

cooperation of other members of the joint criminal enterprise. Once there, civilian staff at the hospital completed the task.

(iv) Inhuman treatment

709. Inhuman treatment is not defined in the CC of BiH, but the jurisprudence of the Court of BiH and the ICTY offer significant guidance in this area. According to the Appellate Panel of the Court of BiH, inhuman treatment “encompasses all other offences that are not specifically prescribed under the criminal offence the Accused is pronounced guilty of”, as long as the accused had the intention to cause an inhuman act.⁸⁷⁶ Similarly, the ICTY Appeals Chamber has defined the elements of cruel treatment as a violation of the laws or customs of war, in relation to Common Article 3(1)(a) of the Geneva Conventions as:

1. an intentional act or omission...which causes serious mental or physical suffering or injury or constitutes a serious attack on human dignity;
2. committed against a person taking no active part in hostilities.⁸⁷⁷

710. The Panel recalls that the necessary elements of the crime of inhuman treatment were described in paragraphs 144 - 150. To determine whether the acts reach the level of gravity and seriousness required for criminal responsibility, the Court may consider a number of factors, including the scale and intensity of the treatment; its duration; the actual bodily injury or intense physical and mental suffering; the nature and context of the treatment; the sex, age, and state of health of the victim; and the existence of premeditation.⁸⁷⁸

711. Under ordinary circumstances, taking blood is an accepted medical procedure which presents little or no risk to the donor and involves their willing consent. When the person from whom the blood is taken is in detention and has no control over the decision, however, the “donation” cannot be considered to be voluntary. Further, the conditions under which the blood was taken in this case were far from optimal.

⁸⁷⁶ *Andrun* Second Instance Verdict, pgs 36 - 37. See also *Četić*, X-KR-08/549-3 (Ct. of BiH), First Instance Verdict, 18 March 2010, p. 18 (holding that the prohibition on inhuman treatment in Article 173 is a blanket prohibition meant to encompass acts that cause great suffering or serious mental or physical injuries).

⁸⁷⁷ *Delalić* Appeal Judgment, para. 424.

⁸⁷⁸ *Andrun* Second Instance Verdict, p. 38; *Alić* First Instance Verdict, p. 25.

712. In this case the detainees were taken during the night, they were not in good physical health, and they were in fear for their safety during the procedure. Several also felt the amount of blood taken was excessive. All expressed physical and mental suffering as a result of the actual procedure and the methods used. The Panel concludes that where circumstances are inherently coercive and environmental conditions are poor, taking blood amounts to inhuman treatment.⁸⁷⁹

713. In this instance the Panel has found that the detainees were no longer taking an active part in the hostilities and had been subjected to cruel treatment which caused serious mental and physical suffering. In this instance the context of the treatment (detention), the poor physical health of the detainees, the deliberate taking of them during the night, the poor conditions at the health center, all contributed to raise these actions to a level of gravity sufficient to incur criminal responsibility.

(v) Conclusion

714. The extent of his active participation compels the Panel to find that the Accused was an actor who joined into the common plan to secure the blood supply with other key players of the Wartime Presidency in violation of the human rights of the detainees from whom it was taken. He intended to participate in the plan and in the crime that was its objective. He implemented the plan and, as such, his participation was significant.

⁸⁷⁹ See paragraphs 321 - 380.

4. Direct Commission

(a) Introduction

(i) Senad Dautović, as the Chief of SJB Bugojno, by the nature of which position he was a member of the Bugojno Municipality Wartime Presidency, allowed the detention of those persons on the premises of the Bugojno SJB although he knew the premises were inadequate for such a large number of detainees. Senad Dautović, as the Chief of SJB Bugojno, allowed the detention of those persons on the premises of the Police Station Centar (located in the basement of the gymnasium) of the Bugojno SJB although he knew the premises were inadequate for such a large number of detainees and that basic conditions were not provided for the stay of detainees on those premises

(b) The Crime: Conditions of Detention (Inhuman Treatment)

715. Senad Dautović is held criminally responsible for the basic conditions of the facilities under his direct control and supervision.

716. The Panel has found that, as the Chief of Police, Dautović was in charge of the premises of the SJB Bugojno as well as the headquarters of the Police Station Centar located in the basement of the gymnasium.

717. The Panel has further found that on both premises the conditions were overcrowded and these conditions persisted for an unreasonable length of time. Witness Rade Marijanović testified that he was detained in the Gymnasium for 70 days.⁸⁸⁰

718. The Panel has held that the evidence demonstrates that the acts necessary for a finding that this crime occurred have been established (paragraphs 381 – 395 & 396 - 420). The Panel also finds these acts were intentional in that the evidence also shows that no efforts were made to relieve the overcrowding or improve the conditions. The Panel is aware that resources were limited but, even so, there was

⁸⁸⁰ Rade Marijanović (11 March 2009).

no evidence presented to show that any effort at all was made to alleviate the unacceptable conditions.

719. All of the detainees who were held in these circumstances had laid down their arms and were no longer participating in any hostilities. The testimony of witnesses attests to the physical and mental suffering of those who were held at both the police station and the gymnasium. Witness Kazimir Kaić testified that he was arrested and taken to the MUP, where was held for around 15 or 16 days before he was transferred to the Gymnasium.⁸⁸¹ Witness Dragan Nevjestić testified that all those held in the Gymnasium were transferred to the stadium in October.⁸⁸²

720. The Panel finds the type of deprivation suffered by the detainees in this case passed the threshold of gravity and seriousness required for criminal responsibility. In reaching this conclusion the Court considered a number of factors, including the duration of time detainees spent in this situation, the intensity of the overcrowding, the mental suffering of the detainees, and physical problems of the detainees caused by the lack of adequate hygiene.

721. The failure to provide adequate space knowing the facilities were not sufficient for the number of detainees held was a serious omission and failure by Dautović. The situation in both facilities went on for an unreasonable period of time. Overcrowding becomes unbearable over time. As described by the witnesses the detainees could not even all lie down to sleep nor could they stand up straight on the premises of the Gymnasium. Witness Berislav Đalto testified that he was detained in the middle cell and that he could not stand up straight.⁸⁸³ In his testimony witness B stated that it was horrible to live under those conditions.⁸⁸⁴ The detained men had laid down their arms and had reasonable expectations that they would be treated fairly.

722. The Panel finds that the detainees were held in overcrowded conditions at the police station for approximately thirty-five days.

⁸⁸¹ Kazimir Kaić (8 April 2009).

⁸⁸² Dragan Nevjestić (25 March 2009).

⁸⁸³ Berislav Đalto (25 June 2008).

⁸⁸⁴ Witness B (26 November 2008).

723. The Panel also found that the men were detained in the inadequate and small basement of the gym of the Gymnasium building and on other premises of the Gymnasium. These men were persons of Croat ethnicity, a total of one hundred detainees, who did not have enough food, water, light, ventilation, or free access to toilets, and who were deprived of the ability to maintain adequate personal hygiene. On or around 8 October 1993 all detainees from these two places were transferred to the stadium.

724. The Panel has found that the prosecution has established that the premises of both sites were under the control of Senad Dautović due to his position as Chief of Police. As Chief he was present at these sites thus he had direct knowledge of the conditions.

(i) Conclusion

725. Given the above definition for inhuman conduct, the Panel finds that the elements are met solely by the overcrowded conditions in one facility and by the overall poor conditions in the other facility. The Wartime Presidency had the ability to commandeer space. Dautović, as a member, could have requested additional space or as Chief taken steps to relieve the overcrowding and sought to improve conditions. He did neither. These conditions lasted for over 30 days in the Bugojno SJB and over two months in the Gymnasium, until all detainees were transferred to the stadium.

5. Command Responsibility

(a) Introduction

(i) Count 4 of the verdict finds Senad Dautović, as the Chief of SJB Bugojno, had reason to know that the detainees were abused in the referenced manner when brought to the premises of the Police Station Centar Bugojno in the Gymnasium building in Bugojno, by his failure to act, that is, by failing to undertake reasonable and necessary measures to prevent the abuse of detainees in the manner described above or punish those who abused them and who were at the time subordinated to him over whom he had effective control and further by his failure to act, that is, by failing to take reasonable and necessary measures which would have prevented the torture and abuse of detainees, which in view of the position he held he was obliged to do, or to punish those responsible for the torture and inhuman treatment who were his subordinates at the time and over whom he had effective control

726. The Panel finds Senad Dautović individually criminally responsible under Article 180(2) of the CC of BiH pursuant to the doctrine of command responsibility for the actions of the men over whom he exercised effective control and failed to prevent or subsequently fail to punish them for actions involving both inhuman treatment and torture. The Panel recalls that Senad Dautović's legal duty to act was discussed in paragraphs 685 - 698.

727. Article 180(2) of the CC of BiH provides:

The fact that any of the criminal offenses referred to in Article 171 through 175 and Article 177 through 179 of this Code was perpetrated by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

728. The Trial Panel recalls in *Rašević and Todović* First Instance Verdict a Trial Panel stated the elements of Command Responsibility set out in the CC of Article

180(2) are identical to those recognized by customary international law at the time of the commission of the offenses.⁸⁸⁵ These are:

1. The commission of a criminal act of the type set out in the applicable sections (which include genocide, war crimes and crimes against humanity).
2. The existence of a superior/subordinate relationship between the Accused and the perpetrators who carried out the criminal act.
3. The superior knew or had reason to know:
 - a. the subordinate was about to commit the crime; or
 - b. had committed the crime.
4. The superior failed to take reasonable and necessary measures to:
 - a. prevent the crime; or
 - b. punish the perpetrator of the crime.

729. Article 180(2) is consistent with the international understanding of the doctrine of command responsibility, inasmuch as does not limit its applicability to military commanders or to situations arising under military command. The military tribunals operating under Allied Control Council Law number 10 established at the end of World War II did not hesitate to hold civilians liable under the doctrine of command responsibility.⁸⁸⁶ Moreover, in 1948 the International Military Tribunal for the Far East found that Prime Minister Tojo and Foreign Minister Koki Hirota were criminally responsible for their failure to prevent and punish crimes committed against prisoners

⁸⁸⁵ *Rašević and Todović* First Instance Verdict, pgs 114 - 115 affirmed by *Rašević and Todović* Second Instance Verdict.

⁸⁸⁶ US Military Tribunal Nuremberg, judgment of 3 November 1947 (*United States v. Oswald Pohl et al.*), in *Trials of War Criminals Before the Nuremberg Military Tribunals Under Control Council Law No. 10*, Volume V, pp. 1051 - 1052 available at <http://werle.rewi.hu-berlin.de/POHL-Case.pdf> (noting that “It has been Mumenthey’s plan to picture himself as a private business man in no way associated with the sternness and rigor of SS discipline, and entirely detached from concentration camp routine. The picture fails to convince. Mumenthey was a definite integral and important figure in the whole concentration camp set-up, and, as an SS officer, wielded military power of command. If excesses occurred in the industries under his control he was in a position not only to know about them, but to do something. From time to time he attended meetings of the concentration camp commanders where all items pertaining to concentration camp routine such as labor assignment, rations, clothing, quarters, treatment of prisoners, punishment, etc., were discussed”); US Military Tribunal Nuremberg, judgment of 19 July 1947 (*United States v. Brandt et al.*), in *Trials of War Criminals Before the Nuremberg Military Tribunals*, Vol. II, pp. 192 - 193 available at <http://werle.rewi.hu-berlin.de/MedicalCase.pdf> (noting that “[i]n the medical field Karl Brandt held a position of the highest rank directly under Hitler. He was in a position to intervene with authority on all medical matters; indeed, it appears that such was his positive duty. It does not appear that at any time he took any steps to check medical experiments upon human subjects. During the war he visited several concentration camps. Occupying the position he did and being a physician of ability and experience, the duty rested upon him to make some adequate investigation concerning the medical experiments which he knew had been, were being, and doubtless, would continue to be, conducted in the concentration camps”).

of war. The Tribunal insisted that Hirota had been “derelict in his duty in not insisting before the Cabinet that immediate action be taken to put an end to the atrocities, failing any other action open to him to bring about the same result”, while Tojo was held accountable as the “head of the Government which was charged with continuing responsibility for the care of prisoners and civilian internees”.⁸⁸⁷

730. More recently, various Chambers of the ad-hoc international tribunals established under the auspices of the United Nations have consistently recognized that the principle of command responsibility applies equally to civilian as well as military leaders. The ICTR Trial Chamber in *Kajelijeli* held that a “civilian or a military superior, with or without official status, may be held criminally responsible for offences committed by subordinates who are under his or her effective control”.⁸⁸⁸ The Appeals Chamber noted that it had been “settled both in ICTR and ICTY jurisprudence that the definition of a superior is not limited to military superiors; it also may extend to *de jure* or *de facto* civilian superiors” and identified the essential element in the inquiry as whether “the *de facto* civilian superior possessed the requisite *degree* of effective control”.⁸⁸⁹

731. The degree of control exercised by a civilian superior does not need to be the same as that exercised by a military commander. The *Brđanin* Trial Chamber explained that;

It cannot be expected that civilian superiors will have disciplinary power over their subordinates equivalent to that of military superiors in an analogous command position. For a finding that civilian superiors have effective control over their subordinates, it suffices that civilian superiors, through their position in the hierarchy, have the duty to report whenever crimes are committed, and that, in light of their position, the likelihood that those reports will trigger an investigation or initiate disciplinary or criminal measures is extant. In situations of armed conflict, it is often the case that civilian superiors assume more power than that with which they are officially vested. In such circumstances, *de facto* authority may exist

⁸⁸⁷ International Military Tribunal for the Far East, Judgment of 12 November 1948, available at <http://www.ibiblio.org/hyperwar/PTO/IMTFE/IMTFE-10.html>

⁸⁸⁸ *Prosecutor v. Kajelijeli*, ICTR-98-44A-T, Trial Judgment, 1 December 2003, para. 771. For additional cases accepting the proposition that civilians can be held responsible for criminal acts pursuant to the doctrine of criminal responsibility, see *Kvočka* Trial Judgment, para. 315; *Kordic & Cerkez* Trial Judgment, paras 416 & 446; *Oric*, Trial Judgment, para. 308; *Stakic* Trial Judgment, para. 462; *Prosecutor v. Fofana & Kondewa*, SCSL-04-14-T, Trial Judgment, 2 August 2007, para. 241.

⁸⁸⁹ *Prosecutor v. Kajelijeli*, ICTR-98-44A-T, Appeals Judgment, 23 May 2005, para. 87.

alongside, and may turn out to be more significant than, *de jure* authority.⁸⁹⁰

732. Finally, while a “showing that the superior merely was an influential person will not be sufficient [...] it will be taken into consideration, together with other relevant facts, when assessing the civilian superior’s position of authority”.⁸⁹¹

733. The Panel specifically finds that Dautović had effective control over his men, and that he failed to take reasonable measures to prevent these crimes or to punish them. As their direct supervisor he had the authority to punish the men under his direct control for their inhuman treatment and torture of detainees.

734. The Panel also notes that Dautović was aware that it was highly likely that abuse could occur. After the surrender there was testimony that people, including members of the police, were jeering and taunting the men as they were marched to separate holding facilities. Dautović, at that time, took steps to control the crowd and ensure the safety of the detainees.⁸⁹² There was no evidence presented, however, indicating that Dautović subsequently took any further steps to ensure that his men would behave properly toward the detainees under his care.

735. Dautović was aware of the anger and the potential for violence given the intensity of the conflict and the actions of his men at the surrender. It was entirely predictable, given the animosity that led to the conflict, as well as that generated by the conflict itself, that the aftermath might not be handled peacefully and professionally. There was no evidence presented to indicate that Dautović, as the Chief of Police, took any concrete steps to prevent the beatings and abusive behaviour by his men which, given the circumstances, were highly likely. Most importantly there was no evidence that he took any action after the abuse occurred to discipline his men. Disciplinary action is a reasonable and necessary measure that helps prevent repeat incidents. Failure to discipline is an abdication of command responsibility.

⁸⁹⁰ *Brdjanin* Trial Judgment, para. 281; *Kordic & Cerekz* Trial Judgment, para. 415.

⁸⁹¹ *Brdjanin* Trial Judgment, para. 281; *Kordic & Cerekz* Trial Judgment, paras 415–16.

⁸⁹² Miroslav Zelić (20 February 2008).

(b) The Crime: Beatings (Inhuman Treatment)

736. The Panel recalls that the elements necessary to prove inhuman treatment (abuse) have been cited above. Again, the detainees have laid down their arms. The numerous beatings caused intense physical and mental suffering. They served no purpose but were simply acts of cruelty.

(i) Conclusion

737. The Panel has made sufficient findings to satisfy the legal elements for the crime of inhuman treatment. The beatings of individual detainees, the beatings during the gauntlet, and the treatment of Gordan Raić, Witness B and Stjepan Cvijanović all constitute acts of sufficient gravity to be considered inhuman treatment. Senad Dautović bears responsibility for these crimes pursuant to the doctrine of command responsibility as the perpetrators were men who served under his leadership. He had effective control over these men and he did not take any measures to prevent or punish these perpetrators.

(c) The Crime: Torture

738. According to the ICTY, torture as a war crime consists of three elements:

1. the infliction, by act or omission, of severe pain or suffering, whether physical or mental;
2. the act or omission must be intentional;
3. the act or omission must have occurred in order to obtain information or a confession, or to punish, intimidate or coerce the victim or a third person, or to discriminate, on any ground, against the victim or a third person.⁸⁹³

739. The Court of BiH has adopted the ICTY's definition of torture as a war crime,⁸⁹⁴ but also requires that at least one of the perpetrators "be a public official or must at any rate act in a non-private capacity, e.g. as a *de facto* organ of a State or any other authority-wielding entity".⁸⁹⁵ Importantly, as applied by the Court of BiH, the entity on

⁸⁹³ *Brđanin* Trial Judgment, para. 481. See also *Kunarac* Appeal Judgment, para. 142 (quoting the definition of torture adopted by the Trial Chamber in the *Kunarac* Trial Judgment, para. 497); *Haradinaj* Appeals Judgment, para. 290.

⁸⁹⁴ *Andrun* Second Instance Verdict, p. 26.

⁸⁹⁵ *Andrun* Second Instance Verdict, p. 27. See also *Hodžić* First Instance Verdict, para. 35.

behalf of which the accused is acting need not be a State entity, but can include a non-State armed group.⁸⁹⁶

740. In evaluating whether the act or omission caused severe pain or suffering, the Court may consider the characteristics of the victim, such as physical or mental condition, age, sex, and position of inferiority.⁸⁹⁷ Permanent injury is not required for a finding of torture.⁸⁹⁸

741. The Panel found that members of the Bugojno SJB were angered by Josip Čubela's and Jozo Andžić's escape from the gymnasium and started to beat Drago Hrnkaš and Ivica Đikić, asking them to reveal which one of the members of the Bugojno SJB helped them escape. Ivica Đikić stated that they were beaten so severely that he “thought about lying about someone helping him, only to make them stop”.⁸⁹⁹

742. The prosecution has shown that Senad Dautović reported about the escape during the session of the Wartime Presidency on 4 August 1993. Dautović was aware of the events that took place. While there is no evidence that he ordered the interrogation and the subsequent beatings, there is also no evidence that he tried to stop it or punish his subordinates. As he was their superior he had effective control over these men.

(i) Conclusion

743. The Panel finds that all of the elements for these crimes were proved beyond a reasonable doubt as well as the elements necessary to hold Dautović individually criminally responsible pursuant to the doctrine of command responsibility as defined in Article 180(2) of the CC of BiH.

⁸⁹⁶ See e.g. *Andrun* Second Instance Verdict, pgs 21, 34 - 35.

⁸⁹⁷ *Brdjanin* Appeals Judgment, para. 242.

⁸⁹⁸ *Brdjanin* Appeals Judgment, para. 242 citing *Kvočka* Trial Judgment, para. 148.

⁸⁹⁹ Đikić Ivica (17 December 2008).

B. NISVET GASAL

(a) Introduction

744. The Panel finds the Accused Nisvet Gasal individually criminally responsible for having committed the criminal offense under Article 173(1)(f), as read with Article 180(1) of the CC of BiH, and under Article 173(1)(c), as read with Article 180(2) of the CC of BiH.

1. Aiding and Abetting by Omission

(a) Introduction

(i) Nisvet Gasal substantially participated in the unlawful taking of persons of Croat ethnicity to perform prohibited forced labor

745. The Panel found that Nisvet Gasal substantially participated in the unlawful taking of persons of Croat ethnicity to perform prohibited forced labor. His failure to act when he had a duty to do so contributed to the commission of this crime. As such, he is held individually criminally responsible for aiding and abetting war crimes against civilians by way of omission.

746. The Panel recalls that “aiding and abetting” has been defined as the act of rendering practical assistance, encouragement, or moral support, which has a substantial effect on the perpetration of a certain crime.⁹⁰⁰ Strictly, “aiding” and “abetting” are not synonymous.⁹⁰¹ “Aiding” involves the provision of assistance; “abetting” may involve no more than encouraging, or being sympathetic to, the

⁹⁰⁰ *Limaj* Trial Judgment para. 516 *citing* *Krstic* Trial Judgment, para 601; *Aleksovski* Appeals Judgment, para 162 *citing* *Furundzija* Trial Judgment, para. 249.

⁹⁰¹ *Limaj* Trial Judgment para. 516 *citing* *Kvočka* Trial Judgment, para. 254 *citing* *Akayesu* Trial Judgment, para. 484.

commission of a particular act.⁹⁰² These forms of liability have been, however, consistently considered together in the jurisprudence of the ICTY.⁹⁰³

(b) Actus Reus

747. The aider and abettor carries out acts or omissions directed to assist, encourage or lend moral support to the perpetration of a certain specific crime (i.e. murder, extermination, rape, torture), and this support has a substantial effect upon the perpetration of the crime.⁹⁰⁴ To determine whether conduct substantially assists the commission of a crime requires a fact-based inquiry.⁹⁰⁵

748. There is no requirement of a cause-effect relationship between the conduct of the aider and abettor and the commission of the crime, nor must such conduct serve as a condition precedent to the commission of the crime.⁹⁰⁶ The *actus reus* of aiding and abetting a crime may occur before, during, or after the principal crime has been perpetrated⁹⁰⁷ and at a location which is removed from that where the principle crime is committed.⁹⁰⁸

749. Here the crime is forced labor. The findings establish that on more than one occasion detainees were sent out of the stadium to the front lines to dig trenches. Nisvet Gasal was aware that this type of labor was inherently dangerous. He personally talked to detainees who were injured while during this type of labor. Miroslav Zelić⁹⁰⁹ was wounded while performing labor on the front lines in Uskoplje (paragraph 483). This witness testified that shortly after he received his wound he talked to Nisvet Gasal, describing the conversation thusly:

⁹⁰² *Limaj* Trial Judgment para. 516 citing *Kvočka* Trial Judgment, para. 254 citing *Akayesu* Trial Judgment, para 484.

⁹⁰³ *Limaj* Trial Judgment para. 516.

⁹⁰⁴ *Mrkšić & Šljivančanin* Appeal Judgment, para. 81.

⁹⁰⁵ *Blagojević & Jokić* Appeal Judgment, para. 134.

⁹⁰⁶ *Perišić* Trial Judgment, para. 126 citing *Mrkšić & Šljivančanin* Appeal Judgment, para. 81; *Blagojević & Jokić* Appeal Judgment, paras 127, 134; *Simić* Appeal Judgment, para. 85; *Blaškić* Appeal Judgment, para. 48. See also *Nahimana* Appeal Judgment, para. 482.

⁹⁰⁷ *Perišić* Trial Judgment, para. 126 citing *Mrkšić & Šljivančanin* Appeal Judgment, para. 81; *Blagojević & Jokić* Appeal Judgment, para 127; *Simić* Appeal Judgment, para. 85; *Blaškić* Appeal Judgment, para. 48.

⁹⁰⁸ *Perišić* Trial Judgment, para. 126 citing *Mrkšić & Šljivančanin* Appeal Judgment, para. 81; *Blaškić* Appeal Judgment, para. 48.

⁹⁰⁹ Miroslav Zelić (20 February 2008).

[...] I don't know exactly how long this conversation lasted. I came in, we greeted each other and he asked me what had happened. I told him that I was wounded while performing labor up there on the front lines. The story of me saving a member of the Army of BiH named Megi had already circulated around and he asked me how I saved him and why I didn't kill him. I said that I am not that sort of man and that there was no reason for me to kill him. I interpreted his words to mean that he was joking...now I could not tell at the time whether he was really joking or just being cynical. After that, he asked me if I wanted him to release me to go home. According to this story, it seems that I have done the right thing and if I wanted, he could release me to go home.

750. The aider and abettor is always an accessory to the crime perpetrated by another person, the principal perpetrator.⁹¹⁰ For an accused to be liable for aiding and abetting, the underlying crime must ultimately be committed by the principle perpetrator.⁹¹¹ However, it is not necessary that the latter be identified or tried, even in cases of crimes requiring specific intent.⁹¹² It is also not necessary that the principal perpetrator be aware of the aider and abettor's contribution to the crime.⁹¹³

(c) Mens Rea

751. The requisite *mens rea* for aiding and abetting is knowledge (in the sense that he is aware) that the acts performed by the aider and abettor assist in the commission of the specific crime of the principal.⁹¹⁴ It is not necessary that the accused shared the intent of the principal offender,⁹¹⁵ but he must be aware of the essential elements of the crime, including the principal's mental state,⁹¹⁶ and he must have made a conscious decision to act in the knowledge that he would thereby support the commission of the crime.⁹¹⁷

752. The ICTY Appeals Chamber has consistently held that:

it is not necessary that the aider and abettor knows the precise crime that was intended or one that was, in the event, committed. If he is aware that one of a number of crimes will probably be committed, and one of those crimes is in fact

⁹¹⁰ *Perišić* Trial Judgment, para. 127 citing *Tadić* Appeal Judgment, para. 229.

⁹¹¹ *Perišić* Trial Judgment, para. 127.

⁹¹² *Perišić* Trial Judgment, para. 127 citing *Milutinović* Trial Judgment, para. 92.

⁹¹³ *Perišić* Trial Judgment, para. 127 citing *Tadić* Appeal Judgment, para. 229; *Milutinović* Trial Judgment, para. 94.

⁹¹⁴ *Blaskić* Appeals Judgment para. 45. See also *Vasiljević* Appeals Judgment, para. 102; *Brdjanin* Trial Judgment, para. 272.

⁹¹⁵ *Aleksovski* Appeals Judgment, para. 162; *Kunarac* Trial Judgment, para. 392; *Furundžija* Trial Judgment, para. 245.

⁹¹⁶ *Aleksovski* Appeals Judgment, para. 162; *Limaj* Trial Judgment, para. 518.

⁹¹⁷ *Kunarac* Trial Judgment, para. 392; *Vasiljević* Trial Judgment, para. 71.

committed, he has intended to facilitate the commission of that crime, and is guilty as an aider and abettor.⁹¹⁸

753. The ICTY Appeals Chamber recently recalled that it rejected an elevated *mens rea* requirement for aiding and abetting, namely the proposition that the aider and abettor needs to have intended to provide assistance.⁹¹⁹

(i) Omission

754. The Trial Panel recalls that the *actus reus* of aiding and abetting may, under certain circumstance, take the form of an omission.⁹²⁰ The ICTY Appeals Chamber has consistently indicated that an accused may incur criminal responsibility under Article 7(1) for omission where there is a legal duty to act.⁹²¹ Recently, the ICTY Appeals Chamber in *Mrkšić and Šljivančanin* found that the Trial Chamber in that case “properly considering aiding and abetting by omission as a recognized mode of liability under the International Tribunal’s jurisdiction”.⁹²² The language and the legal standard of Article 180(1) of the CC of BiH are the same as those of Article 7(1) of the ICTY Statute.

755. The *actus reus* and *mens rea* requirements necessary to support a conviction for aiding and abetting by omission are the same as those necessary to support a conviction for aiding and abetting by a positive act.⁹²³ The *actus reus* requirement is fulfilled by a showing that, given the circumstances of the case, the failure to discharge a legal duty to act was directed to assist, encourage, or lend moral support to the perpetration of the crime and that it had a substantial effect on the realization

⁹¹⁸ *Perišić* Trial Judgment, para. 130 citing *Simić* Appeal Judgment, para. 86; *Mrkšić & Šljivančanin* Appeal Judgment, para. 49. See also *Blaškić* Appeal Judgment, para. 49 citing *Furundžija* Trial Judgment, para. 246; *Ndindabahizi* Appeal Judgment, para. 122.

⁹¹⁹ *Perišić* Trial Judgment, para. 130 citing *Mrkšić & Šljivančanin* Appeal Judgment, para. 159. See also *Blaškić* Appeal Judgment, para. 49 citing *Vasiljević* Appeal Judgment, para. 102; *Blagojević & Jokic* Appeal Judgment, para. 222.

⁹²⁰ *Blaškić* Appeal Judgment, para. 47 & 663.

⁹²¹ *Perišić* Trial Judgment, para. 133 citing *Mrkšić & Šljivančanin* Appeal Judgment, paras 134 - 135; *Orić* Appeal Judgment, para. 43; *Brđanin* Appeal Judgment, para. 274; *Galić* Appeal Judgment, para. 175; *Blaškić* Appeal Judgment, para. 47, 663-664; *Nahimana* Appeal Judgment, para. 482. As to the legal duty to act, the Appeals Chamber has, for instance, held that the breach of a legal duty imposed by laws and customs of war give rise to individual criminal responsibility, *Mrkšić & Šljivančanin* Appeal Judgment, paras 93 - 94, 151.

⁹²² *Perišić* Trial Judgment, para. 133 citing *Mrkšić & Šljivančanin* Appeal Judgment, para. 135.

⁹²³ *Perišić* Trial Judgment, para. 134 citing *Mrkšić & Šljivančanin* Appeal Judgment, paras 49, 81, 93 - 94, 146, 156; *Orić* Appeal Judgment, para. 43; *Brđanin* Appeal Judgment, para. 274.

of that crime.⁹²⁴ The *mens rea* requirement is fulfilled by a showing that “the aider and abettor must know that his omission assists in the commission of the crime of the principal perpetrator and must be aware of the essential elements of the crime which was ultimately committed by the principal perpetrator”.⁹²⁵

756. The ICTY Appeals Chamber held that this form of liability necessarily and implicitly requires that the accused had the ability to act, i.e. that “there were means available to the accused to fulfill [his legal] duty”.⁹²⁶

757. The Trial Panel notes that the ICTY Appeals Chamber in *Brđanin* drew a distinction between aiding and abetting by omission where there is a legal duty to act, and aiding and abetting by tacit approval and encouragement,⁹²⁷ which requires that the accused held a position of authority over the principal perpetrator and was present at the scene of the crime,⁹²⁸ and that this combination allowed for the inference that non-intervention amounted to tacit approval and encouragement.⁹²⁹ In this case the Panel finds the Accused criminally responsible under the former mode of liability.

(d) The Crime: Forced Labor

758. Forcing persons detained by reason of an armed conflict to engage in labor is not itself a violation of international law. Indeed, Article (5)(1)(e) of Additional Protocol II expressly contemplates that “persons deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained” may be “made to work”.⁹³⁰ Importantly, however, the provision goes on to state that detained persons who are compelled to work “shall [...] have the benefit of working conditions and safeguard similar to those enjoyed by the local civilian population”.⁹³¹ Furthermore,

⁹²⁴ *Perišić* Trial Judgment, para. 134 citing *Mrkšić & Šljivančanin* Appeal Judgment, paras 49 & 146.

⁹²⁵ *Perišić* Trial Judgment, para. 134 citing *Mrkšić & Šljivančanin* Appeal Judgment, paras 49 & 146.

⁹²⁶ *Perišić* Trial Judgment, para. 135 citing *Mrkšić & Šljivančanin* Appeal Judgment, para. 154.

⁹²⁷ *Perišić* Trial Judgment, para. 136 citing *Brđanin* Appeal Judgment, paras 273 - 274; *Ntagerura* Appeal Judgment, para. 338. See also *Aleksovski* Trial Judgment, para. 87; *Akayesu* Trial Judgment, para. 706.

⁹²⁸ *Perišić* Trial Judgment, para. 136.

⁹²⁹ *Perišić* Trial Judgment, para. 136 citing *Brđanin* Appeal Judgment, para. 273; *Kayishema & Ruzindana* Trial Judgment, para. 200; *Furundžija* Trial Judgment, paras 207 - 209.

⁹³⁰ APII, Art. 5(1)(e).

⁹³¹ APII, Art. 5(1)(e). See also Third Geneva Convention, Part III, Section III; Fourth Geneva Convention, Art. 40.

certain types of forced labor have been found to constitute cruel treatment in violation of Common Article 3 and Additional Protocol II.

759. In addition, the ICTY has held that “certain types of forced labor may amount to cruel and inhumane treatment if the conditions under which the labor is rendered are such as to create danger for the life and health of the civilians, or may arouse in them feelings of fear, and humiliation”, such as “placing them in life-threatening situations”.⁹³² The ICTY has also held that forced labor amounts to cruel treatment where the labor requires noncombatants to support military operations, including the digging of trenches, “against forces with whom those persons identify or sympathize”.⁹³³

760. Finally, forced labor that amounts to humiliating or degrading treatment may constitute a violation of the prohibition against “outrages upon personal dignity” found in Common Article 3 and Additional Protocol II,⁹³⁴ so long as the resulting humiliation of the victim is “so intense that any reasonable person would be outraged”.⁹³⁵ In fact, the ICTY has found that “the use of detainees as human shields or trench-diggers constitutes an outrage upon personal dignity”.⁹³⁶ Hence, depending on the type of labor and the attendant conditions, forced labor may constitute a violation of international law and be considered inhuman treatment.

761. The Court of BiH analyzed the war crime of forced labor under Article 173(1)(f) in the *Kovać* case, in which it held that “the force exerted in order to have the work done should be interpreted to involve the use or threat of physical violence, like the one that is caused by the fear of violence, coercion, imprisonment, physiological oppression or abuse of power, *or by taking advantage of the circumstances surrounding the coercion*”.⁹³⁷ The important issue, according to the Panel, “is

⁹³² *Simić* Trial Judgment, para. 91.

⁹³³ *Blaškić* Appeals Judgment, para. 597.

⁹³⁴ See e.g. Fourth Geneva Convention, Art. 3(1)(c) (prohibiting “outrages upon personal dignity, in particular humiliating and degrading treatment” against persons taking no active part in hostilities); AP II, Art.4(2)(e).

⁹³⁵ *Kunarac* Appeals Judgment, para. 162.

⁹³⁶ *Aleksovski* Trial Judgment, para. 229.

⁹³⁷ *Kovać* First Instance Verdict, p. 39 (emphasis added).

whether an individual who was allegedly compelled to forced labour, bearing mind the relevant circumstances, actually had any choice”.⁹³⁸

762. The Court has also analyzed acts of forced labor underlying a charge of enslavement as a crime against humanity in the *Rašević and Todović* case.⁹³⁹ Specifically, the Trial Panel convicted Rašević, the commander of the prison guards at the Foča KP Dom detention center, and Todović, the assistant warden of the prison, of the crime against humanity of enslavement based on their roles in forcing non-Serb detainees to perform labor both inside and outside the detention facility.⁹⁴⁰ Notably, although the Trial Panel recognized that “some witnesses did testify that they worked voluntarily, or at least did not object”,⁹⁴¹ it rejected the claim by the Defense that the labor was not “forced or coerced”, stressing that, in the context of detention, labor may be deemed to be “forced” even if the detainees engaged willingly in the labor.⁹⁴² In fact, quoting the Elements of Crimes of the International Criminal Court’s Rome Statute, the Trial Panel held that “[t]he term ‘forcibly’ is not restricted to physical force, but may include threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression, or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment”.⁹⁴³ The Trial Panel also rejected the Defense’s claim that the detainees were lawfully forced to work “pursuant to penal regulations and national law”, noting that “detainees at the KP Dom were unlawfully and arbitrarily imprisoned, and therefore no penal regulation or law applying to either lawful convicts or lawful prisoners of war could justify forcing the detainees to labor”.⁹⁴⁴

763. The Panel has found that Nisvet Gasal had limited authority when it came to the detainees; however, at a minimum he had the ability to file reports and raise objections to these actions, even if he might not have been able to prevent the actual taking out of detainees. The Panel takes note of the testimony of Selmo Cikotić, who issued orders for detainees to be used in labor at the front lines. Cikotić testified

⁹³⁸ *Kovać* First Instance Verdict, p. 39.

⁹³⁹ *Rašević and Todović* First Instance Verdict, pgs 76 - 84.

⁹⁴⁰ *Rašević and Todović* First Instance Verdict, pgs 76 - 84.

⁹⁴¹ *Rašević and Todović* First Instance Verdict, p. 81.

⁹⁴² *Rašević and Todović* First Instance Verdict, p. 82.

⁹⁴³ *Rašević and Todović* First Instance Verdict, p. 82 (emphasis added).

⁹⁴⁴ *Rašević and Todović* First Instance Verdict, p. 82.

these orders came from higher in the military chain of command. The issue for the Panel, however, is one of individual responsibility. Gasal knew these orders were illegal. He was in a position of some responsibility, however limited. Here his silence allowed the acts to continue without change. His obligation as the warden was to file official reports which called these acts into question. He had the means to do this and failed to do so. This had a substantial effect on the commission of these crimes. Gasal was the last official “gatekeeper” who could have raised an objection.

(i) Conclusion

764. The Panel finds that by his failure to perform his legal responsibilities, Nisvet Gasal significantly participated by way of omission in the unlawful taking of persons of Croat ethnicity to perform forced labor.

2. Command Responsibility

(a) Introduction

765. The Panel has reviewed above the necessary elements needed to hold a person individually criminally responsible under this mode of liability (paragraphs 205 – 207).

766. The Panel recalls that Article 180(2) of the CC of BiH provides:

The fact that any of the criminal offenses referred to in Article 171 through 175 and Article 177 through 179 of this Code was perpetrated by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

767. The Panel recalls the elements of Command Responsibility as set out in the CC of Article 180(2) are identical to those recognized by customary international law at the time of the commission of the offenses.⁹⁴⁵

⁹⁴⁵ *Rašević and Todović* First Instance Verdict, pgs 114 - 115 affirmed by *Rašević and Todović* Second Instance Verdict.

768. The criminal acts charged here are war crimes pursuant to 173(1)(c) of the CC of BiH. The beatings incurred at the camp after Gasal became warden were of sufficient duration and intensity to meet the definition of inhuman treatment.

769. Gasal, as the warden of the *Iskra* stadium, was in a superior/subordinate relationship with the guards who carried out the criminal act.

770. Gasal knew and had reason to know these beatings were occurring. He was aware of these beatings through reports made by Kukavica (paragraph 637). One of the measures to prevent further occurrences would have included putting the guards on notice that this behavior would not be tolerated. He could have done this by punishing the perpetrators, which he failed to do.

771. Beyond simply giving notice to his subordinates, Gasal also had an affirmative obligation to investigate and punish the perpetrators of the crime over whom he had effective control. With respect to other perpetrators he had an obligation to report their activities to the relevant authorities in order to prevent further abuse.

(b) The Crime: Beatings (Inhuman Treatment)

772. The Panel recalls that for the crime of inhuman treatment the acts must be an intentional act or omission which causes serious mental or physical suffering or injury or constitutes a serious attack on human dignity, and the act must be committed against a person taking no active part in hostilities.⁹⁴⁶ It has been established that these detainees had laid down their arms and as such were no longer taking part in hostilities. The Panel has made extensive findings as to the physical and mental suffering caused by these beatings and the omissions of Gasal which facilitated these acts (paragraphs 522 – 571).

773. To determine whether the acts reach the level of gravity and seriousness required for criminal responsibility, the Court may consider a number of factors, including the scale and intensity of the treatment; its duration; the actual bodily injury or intense physical and mental suffering; the nature and context of the treatment; the

⁹⁴⁶ *Delalić* Appeal Judgment, para. 424.

sex, age, and state of health of the victim; and the existence of premeditation.⁹⁴⁷ In this case the beatings were severe, caused actual bodily injury, and produced intense physical and mental suffering. The men were in poor physical health and held in detention. The perpetrators who beat the detainees did so with premeditation and clearly intended for the beatings to occur.

774. The Panel findings show that Nisvet Gasal was in a position of authority at the stadium. He was responsible for the safety of the men under his care. He was put on notice that detainees had been abused when he arrived at the camp. He himself testified that Kukavica had repeatedly requested that something be done to stop these beatings.

775. It is clear that he did take some steps to stop the beatings and for the most part was successful. Many detainees testified that the beatings significantly lessen after Gasal arrived at the camp. However, on the occasions when beatings did occur, he failed to take the necessary steps to punish the perpetrators. In order to prevent these beatings a timely and effective response was required. There is no evidence, despite his awareness of the crimes, that Gasal took any concrete action to punish the perpetrators. This would have been clear notice to the guards that these actions were not only unacceptable but would also not be tolerated in the future.

776. The Panel wishes to emphasize that it is the number of significant beatings that happened after he assumed control of the stadium that is the problem. These acts cannot be ignored. On the other hand, the Panel does recognize the beatings were also greatly reduced after he assumed the position of warden. This fact was taken into consideration in determining his sentence.

(i) Conclusion

777. Nisvet Gasal incurs individual criminal responsibility for his failure to take reasonable and necessary measures to prevent the abuse of detainees at the camp for whose operation he was responsible (by either punishing his subordinates who engaged in abuse or reporting his subordinates and other offenders).

⁹⁴⁷ *Andrun* Second Instance Verdict, p. 38. See also *Alić* First Instance Verdict, p. 25.

IX. ACQUITTAL

A. SECTION 6 OF THE OPERATIVE PART OF THE VERDICT

778. The Panel holds that the Prosecution failed to prove that the Accused Nisvet Gasal, Musajb Kukavica and Senad Dautović committed the criminal offense of War Crimes against Civilians in violation of Article 173(1)(c) and (e), as read with Article 180(1) and Article 29 of the CC of BiH, described in detail in Section 6 of the operative part of the Verdict (Count 10(a)) of the Amended Indictment.

779. The Panel will first consider the charges against Musajb Kukavica and Nisvet Gasal under this count, and then will examine the issue of Senad Dautović's guilt.

780. Under this count of the Indictment, Nisvet Gasal, the camp warden at the FC *Iskra* stadium camp, and Musajb Kukavica, the commander of camp security at the FC *Iskra* stadium camp, were charged as persons responsible for the camp's operation, Nisvet Gasal in the period from 21 September 1993 until 19 March 1994 and Musajb Kukavica in the period from the establishment of the FC *Iskra* stadium camp in August until approximately mid-September 1993 and from 21 September 1993 until mid-March 1994, that they kept detained over 300 men of Croat ethnicity, among them Croat civilians and members of the HVO Brigade *Eugen Kvaternik* Bugojno who laid down their arms, in inhumane conditions and failed to take adequate measures in order to bring conditions in the camp to the level that would allow for the stay of detainees in the camp, nor did they take measures aimed at resolving the status of persons who were detained in the camp, although they knew that these persons were never informed about the reasons for their detention, that is, no decision on their custody was ever issued and no proceedings were instigated in accordance with the applicable criminal procedure code, or any other law or rules relative to the treatment of such persons.

781. The Panel established beyond any reasonable doubt that Nisvet Gasal was the camp warden at the FC *Iskra* stadium camp between 22 September 1993 and 19 March 1994. The Panel accordingly changed the Indictment of the Prosecutor's Office with respect to the date when Nisvet Gasal assumed the position of the camp warden (paragraph 475) in the convicting part of the Verdict. Based on the adduced evidence, the Panel considers it established beyond a reasonable doubt that that

Musajb Kukavica was the commander of camp security at the FC *Iskra* stadium camp during the period relevant to the Indictment, but found that the date he returned to work at the camp for the second time, together with Nisvet Gasal was 22 September 1993.⁹⁴⁸

782. It was established beyond any reasonable doubt that over 300 men – persons of Croat ethnicity - were detained in this camp (paragraph 470).

783. However, with respect to the criminal offense of War Crimes against Civilians under Article 173(1)(c), as read with Article 180(1) and Article 29 of the CC of BiH, the Prosecution failed to prove that Nisvet Gasal, as the camp warden at the FC *Iskra* stadium camp, failed to take adequate measures in order to bring conditions in the camp to the level that would allow detainees to stay of in the camp. With respect to Musajb Kukavica, the commander of camp security at the FC *Iskra* stadium camp, the Prosecution failed to provide evidence that he, by virtue of his position, had a duty and obligation to ensure that adequate living conditions were maintained at the FC *Iskra* stadium camp.

784. It is clear that the conditions at the FC *Iskra* stadium camp were insufficient to accommodate the large number of detainees that were held there. This was especially the case in early August, the initial period when the FC *Iskra* stadium camp was established and when the first detainees were brought to the camp, until approximately October 1993.

785. The witnesses who testified in relation to these circumstances consistently stated that conditions were terrible in the initial period of the camp's operation. Rooms were too small to accommodate such a large number of detainees, poor hygienic conditions prevailed inasmuch as the detainees could not take a bath and had no free access to toilets, there was insufficient food and a few detainees did not receive necessary medical assistance. These are the conditions that the persons of Croat ethnicity detained in the camp during this period had to endure.⁹⁴⁹

⁹⁴⁸ Nisvet Gasal (17 February 2010); Besim Cetin (3 February 2010).

⁹⁴⁹ Ivica Topić (5 March 2008); Marko Gunjača (20 February 2008); Josip Kalajica (15 October 2008).

786. The Panel is satisfied that the Prosecution has proved beyond a reasonable doubt that an improvement in the conditions at the FC *Iskra* stadium camp corresponded with the arrival of Nisvet Gasal as camp warden at the FC *Iskra* stadium camp (paragraph 475) and the visit to the camp by representatives of the International Committee of the Red Cross (the ICRC) on 28 September 1993 (paragraph 302). This was corroborated by a large number of witnesses, including Frano Vejić,⁹⁵⁰ Marko Gunjača,⁹⁵¹ Ivica Topić,⁹⁵² Ivica Klarić,⁹⁵³ Ivo Kujundžić,⁹⁵⁴ Nikica Marković,⁹⁵⁵ Kazimir Kaić,⁹⁵⁶ Željko Lozić⁹⁵⁷ and many others.

787. In the Panel's view, crucial for resolving this case is the issue of whether the measures that were taken to improve conditions at the camp were proportionate with what Nisvet Gasal could accomplish in his capacity as the camp warden, taking into account the context of the overall situation in Bugojno during the relevant period.

788. The Panel will first consider the issue of the adequacy of facilities at the FC *Iskra* stadium camp where persons of Croat ethnicity were detained during the relevant period of time.

789. In this respect, it is important to point out that the decision to set up the FC *Iskra* stadium camp was made by the Bugojno Municipality Wartime Presidency (paragraphs 465 - 468) upon the proposal of the Wartime Presidency's Executive Board⁹⁵⁸ before the outset of the conflict between the HVO and the ARBiH in the area of Bugojno (paragraph 468).

790. Nisvet Gasal assumed the duties of the camp warden at the FC *Iskra* stadium camp on 22 September 1993. At that time the Camp had already been in operation for almost two months (paragraph 468).

791. In their closing arguments the Prosecution alleged that it was possible to detain these persons in Hotel Kalin, but failed to present evidence that would have

⁹⁵⁰ Frano Vejić (13 February 2008).

⁹⁵¹ Marko Gunjača (20 February 2008).

⁹⁵² Ivica Topić (5 March 2008).

⁹⁵³ Ivica Klarić (27 February 2008).

⁹⁵⁴ Ivo Kujundžić (16 April 2008).

⁹⁵⁵ Nikica Marković (16 April 2008).

⁹⁵⁶ Kazimir Kaić (8 April 2009).

⁹⁵⁷ Željko Lozić (6 May 2009).

allowed the Panel to determine that this facility, based on its condition, size, location, and potential for providing a safe environment for detainees, among other factors, would have been a superior choice to accommodate detainees.

792. Even assuming that the Hotel was the superior option, the Panel would have been unable to establish, based on the evidence presented to it that Nisvet Gasal could have influenced this selection.

793. Having reviewed the adduced evidence, the Panel found that upon Nisvet Gasal's arrival and his taking up of the duty of the camp warden at the FC *Iskra* stadium camp on 22 September 1993, construction work was carried out in order to increase the number of rooms in which detainees were held. For this purpose two additional rooms were built at the FC *Iskra* stadium camp. This was confirmed by the testimony of Vlatko Brnas,⁹⁵⁹ Ivica Gunjača,⁹⁶⁰ Witness D⁹⁶¹ and Nisvet Gasal.⁹⁶² Although these construction projects did not completely resolve the problem of overcrowding, it is clear that the conditions were somewhat improved by the expansion.

794. Additionally, the Panel established that during the period after Nisvet Gasal had already assumed the post of the camp warden at the FC *Iskra* stadium camp, improvised bunk beds were constructed with the purpose of relieving the overcrowding and improving the conditions of detention. This was confirmed by witnesses Slaven Brajković,⁹⁶³ Marko Gunjača,⁹⁶⁴ Ivan Faletar,⁹⁶⁵ Witness A⁹⁶⁶ and Dragan Boškić.⁹⁶⁷

795. Kazimir Kaić testified in relation to these circumstances and said that bunk beds were made, describing it in the following words:

⁹⁵⁸ T-178 (Proposed Decision by the Executive Board, Bugojno municipality, Wartime Presidency).

⁹⁵⁹ Vlatko Brnas (1 October 2008).

⁹⁶⁰ Ivica Gunjača (15 October 2008).

⁹⁶¹ Witness D (21 January 2009).

⁹⁶² Nisvet Gasal (17 February 2010).

⁹⁶³ Slaven Brajković (3 September 2008).

⁹⁶⁴ Marko Gunjača (20 February 2008).

⁹⁶⁵ Ivan Faletar (3 March 2010).

⁹⁶⁶ Witness A (5 November 2008).

⁹⁶⁷ Dragan Boškić (20 March 2008).

[...] then, in order to make more room we were allowed to bring in some planks, which we used to make a bunk bed so that we wouldn't have to sleep on each other...⁹⁶⁸

796. Given the lack of construction materials in Bugojno at that time (a consequence of the ongoing conflict in the area) detainees were taken to different neighborhoods in Bugojno, where they collected the construction material necessary to make the bunk beds by taking it off of private houses.⁹⁶⁹

797. It can be inferred from the above that there were attempts to resolve the issue of overcrowded conditions at the FC *Iskra* stadium camp in many ways, even by stealing construction material from private houses in Bugojno. It is also clear that the military failed to provide Gasal with necessary resources to improve conditions in any meaningful way.

798. With the arrival of Nisvet Gasal and his taking up of the post of the camp warden at the FC *Iskra* stadium camp, the hygienic conditions in the camp improved.

799. The Panel established this fact beyond any reasonable doubt based on the testimony of witnesses Frano Vejić⁹⁷⁰ and Mario Glišić,⁹⁷¹ who each said that the improvement in hygienic conditions coincided with Nisvet Gasal's appointment to the post of the camp warden.

800. Ivica Keškić, who was taken to perform labor near the village of Poriče around 18 September 1993, from whence he escaped soon afterwards, testified that during his detention at the camp detainees were not taken out for a bath.⁹⁷² The Panel has no reason to doubt the veracity of his testimony.

801. Accordingly, bearing in mind the testimony of other witnesses⁹⁷³ who clearly stated that after a while detainees were allowed to bathe in private houses in Bugojno, it can be reasonably inferred that this practice was put in place after the arrival of Nisvet Gasal and his assumption of the duties of camp warden at the FC *Iskra* stadium camp.

⁹⁶⁸ Kazimir Kaić (8 April 2009).

⁹⁶⁹ Vlatko Brnas (1 October 2008); Witness A (5 November 2008).

⁹⁷⁰ Frano Vejić (13 February 2008).

⁹⁷¹ Mario Glišić (14 May 2008).

802. Although the Prosecution pointed out that some detainees were taken for a bath only on two or three occasions during the period when Nisvet Gasal was the camp warden, many witnesses testified that they bathed more frequently.⁹⁷⁴ Witnesses were consistent in their testimony that everyone had the opportunity to be taken out for a bath.⁹⁷⁵

803. The Panel holds that given the number of detained persons at the FC *Iskra* stadium camp and the fact that they had to be taken out for a bath under the escort of a guard, a limited resource, there was no evidence provided that showed that Nisvet Gasal could have ensured that the detainees bathed more regularly.

804. In the above context, it is important to note that a tank truck came to the compound of the FC *Iskra* stadium camp during this period, and that there was a hydrant where the detainees could meet their basic hygienic needs during the morning roll-call, that is, they could shave, wash their faces or wash up. This is clearly corroborated by the testimony of witnesses Vlatko Brnas,⁹⁷⁶ Drago Žulj,⁹⁷⁷ Nikica Marković,⁹⁷⁸ Ivica Džikić,⁹⁷⁹ Jozo Tomas,⁹⁸⁰ Kazimir Kaić⁹⁸¹ and Ivan Faletar.⁹⁸²

805. In the period before Nisvet Gasal's arrival, there was one toilet inside the FC *Iskra* stadium camp, which, according to the witness accounts, was often clogged.⁹⁸³

806. In the course of the first instance proceedings, the Panel found that in the period after the arrival of Nisvet Gasal and his taking up the post of the warden, three additional latrines were made, which surely had a positive effect on improving the hygienic conditions in the camp. This is corroborated by the testimony of a large

⁹⁷² Ivan Keškić (14 May 2008).

⁹⁷³ See e.g. Sjepan Radoš (27 August 2008); Vinko Pavić (22 April 2009)

⁹⁷⁴ Ljuban Živko (17 December 2008); Vlatko Brnas (1 October 2008); Witness A (5 November 2008); Witness B (26 November 2008); Sjepan Radoš (27 August 2008); Vinko Pavić (22 April 2009); Rade Marjanović (11 March 2009); Ivan Faletar (3 March 2010).

⁹⁷⁵ Frano Vejić (13 February 2008); Mario Glišić (14 May 2008); Ljuban Živko (17 December 2008).

⁹⁷⁶ Vlatko Brnas (1 October 2008).

⁹⁷⁷ Drago Žulj (27 February 2008).

⁹⁷⁸ Nikica Marković (16 April 2008).

⁹⁷⁹ Ivica Džikić (17 December 2008).

⁹⁸⁰ Jozo Tomas (10 December 2008).

⁹⁸¹ Kazimir Kaić (8 April 2009).

⁹⁸² Ivan Faletar (3 March 2010).

⁹⁸³ Berislav Đalto (25 June 2008); Frano Vejić (13 February 2008).

number of witnesses, among them Dražen Vučak,⁹⁸⁴ Stipo Vučak,⁹⁸⁵ Berislav Đalto,⁹⁸⁶ Zdravko Kezić,⁹⁸⁷ Gordan Raić,⁹⁸⁸ Frano Vejić,⁹⁸⁹ Ivan Kapetanović,⁹⁹⁰ Marko Gunjača⁹⁹¹ and many others.

807. Although some witnesses testified that they could not use these latrines except when they were taken out for the roll-call,⁹⁹² most of them said the opposite, namely that generally they could also use these outdoor toilets on the occasions when they were inside the rooms in the camp.⁹⁹³

808. In this respect, the Panel considered the testimony of Bosiljka Kasalo,⁹⁹⁴ who confirmed that the detainees were able to use outdoor toilets in the evening hours, too, and not only during the morning roll-call as the Prosecution argued. Bosiljka Kasalo testified that her three sons were detained in the camp and that in the evening hours, when they came out to use the toilets, she would come in front of the FC *Iskra* stadium camp in order to see them.⁹⁹⁵

809. It follows from the evidence that on some days, guards did not allow the detainees to relieve themselves in the outdoor toilets. This is corroborated by the testimony of Nikica Marković⁹⁹⁶ and Stipica Džapić,⁹⁹⁷ as well as Marko Gunjača who added that the use of outdoor toilets depended on the developments on the front line.⁹⁹⁸ However, the Prosecution failed to present evidence that Nisvet Gasal ordered these restrictions, or that he knew that guards had prevented the detainees from using the outdoor toilets on some days. The Panel finds that these restrictions were imposed on the detainees by guards acting willfully in their personal capacity.

⁹⁸⁴ Dražen Vučak (9 July 2008).

⁹⁸⁵ Stipo Vučak (9 July 2008).

⁹⁸⁶ Berislav Đalto (25 June 2008).

⁹⁸⁷ Zdravko Kezić (2 July 2008).

⁹⁸⁸ Gordan Raić (13 February 2008).

⁹⁸⁹ Frano Vejić (13 February 2008).

⁹⁹⁰ Ivan Kapetanović (19 March 2008).

⁹⁹¹ Marko Gunjača (20 February 2008).

⁹⁹² Stjepan Radoš (27 August 2008); Drago Žulj (27 February 2008).

⁹⁹³ Dražen Vučak (9 July 2008); Berislav Đalto (25 June 2008); Milenko Begić (2 July 2008); Zdravko Kezić (2 July 2008); Slaven Brajković (3 September 2008); Frano Vejić (13 February 2008); Ivan Kapetanović (19 March 2008); Ivan Faletar (3 March 2010).

⁹⁹⁴ Bosiljka Kasalo (27 August 2008).

⁹⁹⁵ Bosiljka Kasalo (27 August 2008).

⁹⁹⁶ Nikica Marković (16 April 2008).

⁹⁹⁷ Stipica Džapić (27 February 2008).

⁹⁹⁸ Marko Gunjača (20 February 2008).

810. It reasonably follows from the evidence that during the period when Nisvet Gasal was the camp warden at the FC *Iskra* stadium camp, tin stoves were put in the rooms that housed the detainees. The problem was there was often no firewood or coal and detainees most frequently used footwear as the heating fuel.⁹⁹⁹

811. The fact that stoves were put in the rooms that housed the detainees clearly indicates that Nisvet Gasal intended to provide heating to detainees during the winter season, but it is evident that he could not secure the necessary fuel.

812. In this context, it is important to note that the detainees at the FC *Iskra* stadium camp were provided with a large number of blankets.¹⁰⁰⁰ Besim Cetin testified that following the exchange of detainees on 19 March 1994 (paragraph 469) he returned 970 blankets and sponge mattresses that had been issued to them.¹⁰⁰¹

813. Witnesses were consistent in their testimony that in the initial period of their detention at the FC *Iskra* stadium camp, the amount of food they received was insufficient and that it was distributed in military food containers. Prepared food was brought in by members of the 307th Motorized Brigade, and guards and prisoners ate the same food.¹⁰⁰² Mario Glišić, a detainee in the camp who participated in the distribution of food, testified that members of the ARBiH who were also detained in the camp (but held separately from the detainees of Croat ethnicity, as they were being held for disciplinary offenses) ate this same food.¹⁰⁰³

814. Mario Glišić pointed to the difficult conditions of life during the war when he stated that it was a generally known fact that there was not enough food or water for other citizens of Bugojno either.¹⁰⁰⁴ Testifying in relation to these circumstances, Nisvet Gasal said:

⁹⁹⁹ Vlatko Brnas (1 October 2008); Berislav Đalto (25 June 2008); Dragan Boškić (20 March 2008); Witness B (26 November 2008); Nikica Marković (16 April 2008).

¹⁰⁰⁰ Janko Ljubos (4 February 2009); Mario Franjić (5 March 2008); Nisvet Gasal (3 March 2010); Besim Cetin (3 February 2010).

¹⁰⁰¹ Besim Cetin (3 February 2010).

¹⁰⁰² Edin Ćorhusić (2 June 2010); Hidajet Vinčević (5 May 2010); Besim Cetin (3 February 2010); Hamid Đopa (13 January 2010); Nermin Fejzić (13 January 2010); Nisvet Gasal (17 February 2010).

¹⁰⁰³ Mario Glišić (14 May 2008).

¹⁰⁰⁴ Mario Glišić (14 May 2008).

Well, there was no food. This is what I mean to say. It was meager. Believe me, we were barely surviving because Bugojno was a blocked town. That's how we called it. There was no way out. I believe there was a way out in the direction of Travnik, Novi Travnik, Zenica, but that was...Central Bosnia was blocked, so there were no humanitarian convoys for a month or two maybe. So, we were barely surviving...and when the convoys did manage to get to Bugojno around Christmas, New Year, it was then that we started receiving some goods. But until then, it was a total chaos [...].¹⁰⁰⁵

815. During the period when Nisvet Gasal was the camp warden, families and friends of detainees were allowed to bring them food at the FC *Iskra* stadium camp.¹⁰⁰⁶ It is evident that during the relevant period of time it was clear to the camp warden that he alone could not ensure that the detainees of Croat ethnicity receive sufficient amount of food, and thus sought assistance from the detainees' family and friends.

816. Nisvet Gasal would surely have prevented the detainees' families and friends from bringing food to them, had he intended to keep the detainees in inhumane conditions.

817. Nun Pavka Dujmović also visited the detainees and, among other things, brought them food.¹⁰⁰⁷ Nisvet Gasal received an approval from Enes Handžić allowing nun Pavka to bring food to the detainees.¹⁰⁰⁸ Access to the camp was never blocked by Gasal, and Nun Pavka frequently and freely visited the detainees. She also brought supplies and cigarettes with her that the detainees did receive.

818. In addition to the above, it is also important to note that for a while detainees were receiving parcels from the D (Distribution) Center, which is clearly corroborated by the testimony of Witness B,¹⁰⁰⁹ Vlatko Brnas,¹⁰¹⁰ Josip Kalajica,¹⁰¹¹ Besim Cetin,¹⁰¹² Hamid Đopa¹⁰¹³ and Nisvet Gasal.¹⁰¹⁴

¹⁰⁰⁵ Nisvet Gasal (17 February 2010).

¹⁰⁰⁶ Ljuban Živko (17 December 2008); Viktor Maros (17 December 2008); Dražen Vučak (9 July 2008); Stipo Vučak (9 July 2008).

¹⁰⁰⁷ Berislav Đalto (25 June 2008); Zoran Gvozden (21 January 2009); Kazimir Kaić (8 April 2009).

¹⁰⁰⁸ Nisvet Gasal (3 March 2010).

¹⁰⁰⁹ Witness B (26 November 2008).

¹⁰¹⁰ Vlatko Brnas (1 October 2008).

¹⁰¹¹ Josip Kalajica (15 October 2008).

¹⁰¹² Besim Cetin (3 February 2010).

¹⁰¹³ Hamid Đopa (13 January 2010).

¹⁰¹⁴ Nisvet Gasal (17 February 2010).

819. The Panel does not suggest that the detainees had enough food, but is satisfied that Nisvet Gasal took all measures available to him at the time to ensure that detainees received adequate nourishment.

820. In the period prior to Nisvet Gasal's arrival and assumption of the post of the camp warden at the FC *Iskra* stadium camp, some detainees who were in poor health were taken for treatment to the Bugojno Health Center.¹⁰¹⁵

821. In addition to these individual cases, with the arrival of Nisvet Gasal and his assumption the post of the camp warden, a practice of weekly visitations to the FC *Iskra* stadium camp by medical doctor Berka Hamzić was put in place. In this way she provided medical assistance to detainees in the camp.¹⁰¹⁶ Also, Jadranka Nikolić, another medical doctor, came to the camp to provide medical assistance and supply the detainees with medication.¹⁰¹⁷

822. The Panel considers it established that during the relevant period of time priority lists of sick detainees who were to be taken for treatment to the Bugojno Health Center were made. Up to twenty sick detainees could apply to be put on the list at any given time.¹⁰¹⁸

823. Jadranka Nikolić testified that during the winter season guards would bring groups of at least 10 detainees from the camp on an almost daily basis. These detainees were provided with medical assistance.¹⁰¹⁹

824. Witnesses Frano Vejić,¹⁰²⁰ Ivica Gunjača,¹⁰²¹ Marko Gunjača,¹⁰²² Željko Ištuk,¹⁰²³ Drago Žulj,¹⁰²⁴ Dragan Nevjestić,¹⁰²⁵ Rade Marjanović¹⁰²⁶ and many others confirmed that they were either personally taken to the Health Center or that others were taken there in order to receive medical treatment. This was also corroborated by Ivica

¹⁰¹⁵ Josip Kalajica (15 October 2008); Milenko Kasalo (20 March 2008).

¹⁰¹⁶ Ivica Topić (5 March 2008); Dragan Nevjestić (25 March 2009); Željko Ištuk (23 April 2008).

¹⁰¹⁷ Jadranka Nikolić (23 April 2008); Stipica Džapić (27 February 2008).

¹⁰¹⁸ Ivica Gunjača (15 October 2008); Jadranka Nikolić (23 April 2008).

¹⁰¹⁹ Jadranka Nikolić (23 April 2008); Ivica Gunjača (15 October 2008).

¹⁰²⁰ Frano Vejić (13 February 2008).

¹⁰²¹ Ivica Gunjača (15 October 2008).

¹⁰²² Marko Gunjača (20 February 2008).

¹⁰²³ Željko Ištuk (23 April 2008).

¹⁰²⁴ Drago Žulj (27 February 2008).

¹⁰²⁵ Dragan Nevjestić (25 March 2009).

¹⁰²⁶ Rade Marjanović (11 March 2009).

Klarić, who went on to add that each morning a list of detainees to be taken to the Health Center was made, but that the number of detainees was limited by the lack of availability of guards to escort a larger group of detainees to the Health Center.¹⁰²⁷

825. Although some witnesses testified that access to medical assistance was denied to them during their detention at the FC *Iskra* stadium camp,¹⁰²⁸ the testimony of the above-mentioned witnesses (paragraphs 820 - 824), which the Panel finds to be credible and consequently accepts in their entirety, suggests otherwise.

826. In their closing arguments the Prosecution relied on the testimony of Ivica Gunjača to allege that Nisvet Gasal cared only to have a list of 20 detainees who applied to receive medical assistance. Ivica Gunjača, a detainee who used to bring to Nisvet Gasal the list of 20 detainees who were to receive medical assistance testified that Nisvet Gasal never enquired as to who was sick or what they suffered from, but that he was only interested in the fact that there were 20 names on the list.¹⁰²⁹

827. However, the state of facts as established by the Panel suggests otherwise, that is, that Nisvet Gasal in his capacity as the camp warden at the FC *Iskra* stadium camp introduced the practice of visitations by the doctors Berka Hamzić and Jadranka Nikolić to the camp, as well as the practice of taking groups of detainees to the Health Center for the purpose of receiving medical assistance. Gasal certainly improved the system whereby detainees received medical care over the system that was in place at the time when he assumed the post of the camp warden.

828. The capacity for the provision of medical assistance to the sick in the wartime Bugojno was best explained by Jadranka Nikolić (maiden name Pejak).¹⁰³⁰

829. Jadranka Nikolić testified that during the relevant period the access to medication was very limited in Bugojno, which impacted the efficiency of the treatment of patients. In response to the Prosecutor's question about the possibilities for potential hospitalization, Jadranka Nikolić answered as follows:

¹⁰²⁷ Ivica Klarić (27 February 2008).

¹⁰²⁸ Stipo Vučak (9 July 2008); Miroslav Marjanović (9 July 2008).

¹⁰²⁹ Ivica Gunjača (15 October 2008).

¹⁰³⁰ Jadranka Nikolić (23 April 2008).

It was not possible at the time...meaning that if you could walk and if you had the presence of mind there was no chance for you to be hospitalized...Because you have to know that the wartime hospital functioned within the Health Center, along with a small segment that was turned into the emergency department. So, a doctor could give a recommendation for hospitalization, i.e. hospital treatment, only to persons who were seriously ill or whose life was in danger at the time [...].¹⁰³¹

830. Enes Handžić testified that there were no written requests for improving the conditions at the FC *Iskra* stadium camp, but that he and camp warden Nisvet Gasal maintained verbal communication on the subject.¹⁰³²

831. In view of the above, the Panel concludes that during the period when he was the camp warden at the FC *Iskra* stadium camp, Nisvet Gasal took measures to improve the quality of life of detainees, and make the conditions of detention for detained Croats more humane.

832. With respect to Musajb Kukavica who was the commander of the camp security at the FC *Iskra* stadium camp, the Prosecution failed to provide any evidence from which the Panel could conclude that Musajb Kukavica had responsibility, by virtue of his position, for the conditions at the FC *Iskra* stadium camp. Musajb Kukavica did participate in some of the construction work aimed at improving conditions in the camp, but regardless of whether this work was carried out on the warden's orders or on his own initiative, he was not a person who could change the conditions in the camp. Musajb Kukavica's acts, which he did on his own initiative, such as, for example, stealing construction material from some houses and establishing a generator system for electricity¹⁰³³ could be characterized as humane gestures on his part aimed at improving the conditions for detainees in the camp. The Panel has looked not just at his job title, but also at what the evidence shows he was actually empowered to do. There was little testimony offered by the prosecution that would show that he had any authority to effect significant change. What is important to the Panel is that, when he could make a difference, he did.

¹⁰³¹ Jadranka Nikolić (23 April 2008).

¹⁰³² Enes Handžić (15 June 2011).

¹⁰³³ Željko Ištuk (23 April 2008); Frano Vejić (13 February 2008); Ivan Kapetanović (19 March 2008).

833. The Panel recalls that the very first prosecution witness, Gordan Raić, stated that Kukavica acted in a “fine manner”.¹⁰³⁴ In fact he was surprised when he heard that Kukavica had been arrested, as “he was a nice guy”.¹⁰³⁵ This sentiment was echoed by many witnesses, who had few complaints about Kukavica.

834. As for Senad Dautović, the Prosecution failed to adduce any evidence from which the Panel could establish that the purpose of the Bugojno Municipality Wartime Presidency was to keep the detained men of Croat ethnicity in inhumane conditions.

835. The Panel accordingly concludes that the Prosecution failed to prove that Nisvet Gasal, Musajb Kukavica and Senad Dautović were responsible for these particular criminal offenses under War Crimes against Civilians (Article 173(1)(c)), as read with Article 180(1) and Article 29 of the CC of BiH.

836. It is clear that there were over 300 male persons of Croat ethnicity detained at the FC *Iskra* stadium camp (paragraph 470).

837. Nisvet Gasal assumed the duty of the camp warden at the FC *Iskra* stadium camp on 22 September 1993, almost two months into the camp's operation (paragraph 467).

838. The great majority, if not all detainees, participated in combat before they surrendered. The great majority of them were members of the HVO, police forces of the HZ HB (Croat Community of Herceg-Bosna) or members of the homeguard units, while some of them were civilians who had taken up arms and thus were participating in the conflict. A few detainees were picked up at home, screened and taken to detention.

839. There were also two minors detained in the camp, namely Ivan Kapetanović¹⁰³⁶ and Witness A.¹⁰³⁷ However, it follows from the adduced evidence

¹⁰³⁴ Gordan Raić (13 February 2008).

¹⁰³⁵ Gordan Raić (13 February 2008).

¹⁰³⁶ Ivan Kapetanović (19 March 2008).

¹⁰³⁷ Witness A (5 November 2008).

that they were members of the HVO homeguard units and that they had taken up arms during the conflict, that is, that they defended themselves.¹⁰³⁸

840. The Army of Bosnia and Herzegovina was a military force at the time set up by the legitimate BiH authorities.

841. Detainees were interrogated for the purpose of determining their roles in the conflict between the HVO and ARBiH (paragraph 667). Records of these interrogations were kept.¹⁰³⁹

842. The Security Organ of the 307th Motorized Brigade of the ARBiH, and as of early November 1993, the Security Service of the OG "West", were bodies that decided on the detention of men – persons of Croat ethnicity, as well as the release of some of them. There is no evidence that Nisvet Gasal could implement a detention decision or release of a detainee from the FC *Iskra* stadium camp. Although Miroslav Zelić testified that Nisvet Gasal asked him if he wanted to be released,¹⁰⁴⁰ no other testimonial or documentary evidence suggests that Nisvet Gasal, in his capacity as the camp warden, had this authority on his own.

843. The FC *Iskra* stadium camp was under the control of the 307th Motorized Brigade of the ARBiH, and as of early November 1993, the Security Service of the OG "West". Nisvet Gasal received all orders and approvals on the interrogation of detainees, on their release, and other orders from the Security Organ of the 307th Motorized Brigade of the ARBiH or the Security Service of the OG "West".¹⁰⁴¹ In support of this determination, the Panel recalls the exhibit of the Defense for Nisvet Gasal, the Approval issued by the Security Organ of the 307th Motorized Brigade of the ARBiH, signed by Enes Handžić, allowing Nisvet Gasal's trip to Sarajevo.¹⁰⁴²

¹⁰³⁸ Ivan Kapetanović (19 March 2008); Witness A (5 November 2008).

¹⁰³⁹ Ivica Džikić (17 December 2008); Vlatko Brnas (1 October 2008); Dražen Vučak (9 July 2008); Berislav Đalto (25 June 2008).

¹⁰⁴⁰ Miroslav Zelić (20 February 2008).

¹⁰⁴¹ See e.g. O-6/1 (Security Service of the OG "West", number: 307-12-1231/93 dated 13 November 1993); O-12/1 (Security Organ, Command of the 307th Motorized Brigade of the ARBiH, number: 307-13-1082/93 dated 21 October 1993); T-609 (Security Organ, Command of the 307th Motorized Brigade of the ARBiH, number 307-13-1006/93 dated 8 October 1993).

¹⁰⁴² O-23/I (Approval of the Command of the 307th Motorized Brigade, Security Organ, number: 307-13-1090/93 dated 21 October 1993).

844. Additionally, it is clear that on several occasions there was the intent to exchange the detained HVO members. This is corroborated by the testimony of Stipo Vučak who said that there was some talk that the exchange would take place in October 1993,¹⁰⁴³ as well as the testimony of Miroslav Zelić, who also said that he had information at the time that the exchange should take place in October 1993.¹⁰⁴⁴ Witness B also testified that while he was performing labor in Duratbegović Dolac, a member of the ARBiH told him on 28 December 1993 that an agreement on the exchange of detainees had been reached, which is why the detainees were returned from Duratbegović Dolac to the camp.¹⁰⁴⁵ Janjko Ljubos testified that the talk of organizing the exchange circulated constantly,¹⁰⁴⁶ while Berislav Jezidžić stated that on one occasion he was returned to the FC *Iskra* stadium camp from the location of Hrasnica because the exchange of detainees was supposed to take place.¹⁰⁴⁷

845. It is clear that the negotiation and authority for the exchange did not lie with the Accused. High level negotiations were ongoing in regards to these and other detainees from the area. This was ultimately resolved by the Washington agreement mentioned by some of the witnesses in the context of improved conditions in the camp. Furthermore while there may have been an attempt to transfer the detainees to Zenica in mid-August (the stopped convoy) (paragraphs 255 - 259) there is no evidence that any of the Accused made any attempt to obstruct this effort. To be clear, if someone were found responsible for preventing a legal exchange then criminal responsibility may incur for an “illegal detention”.

846. The Panel recalls that during an armed conflict and in its aftermath there is no blanket prohibition against detention. Here there was evidence that screening took place immediately to ensure that civilians were released. Only those who had been engaged in the conflict were detained, as those individuals posed a security risk to the city.

847. Conditions of detention must be humane and the length of time cannot be unreasonable. In this case the Panel finds that, at least as to these Accused, the

¹⁰⁴³ Stipo Vučak (9 July 2008).

¹⁰⁴⁴ Miroslav Zelić (20 February 2008).

¹⁰⁴⁵ Witness B (26 November 2008).

¹⁰⁴⁶ Janjko Ljubos (4 February 2009).

¹⁰⁴⁷ Berislav Jezidžić (21 January 2009).

duration of the detention was not within their control. Furthermore, given the state of conflict that prevailed at the relevant time, resources were restricted and living conditions were made more difficult as a consequence.

848. With respect to Musajb Kukavica, who was the commander of camp security at the FC *Iskra* stadium camp, the Prosecution failed to present any evidence from which the Panel could conclude that it was his duty, by virtue of his position, to determine the status of the detained persons.

849. As for Senad Dautović, the Prosecution has failed to present any evidence from which the Panel could establish his obligation to determine the status of detained persons. No evidence was presented before the Panel suggesting that Senad Dautović participated in the joint criminal enterprise the purpose and plan of which was to unlawfully detain these persons.

B. SECTIONS 7(A), 7(B), 7(C), 8(A), 8(B), 8(C), 9, 10, 11(A), 11(B), 12, 14(A) AND 14(B) OF THE OPERATIVE PART OF THE VERDICT

850. The Panel acquitted Senad Dautović of the criminal acts alleged under sections 7(a), 7(b), 7(c), 8(a), 8(b), 8(c), 9, 10, 11(a), 11(b), 11(c), 12, 14(a) and 14(b) of the operative part of the Verdict or counts 1(a), 1(b), 1(c), 2(a), 2(b), 2(c), 3, 4, 5(a), 5(b), 5(d), 6, 9(g) and 9(i) of the Amended Indictment.

851. Having carefully reviewed the Prosecution and Defense evidence, as well as evidence adduced by the Court, the Panel holds that it cannot be concluded beyond a reasonable doubt that the Accused Senad Dautović committed the criminal offenses charged against him under the above-mentioned counts of the Amended Indictment.

852. In the course of the main trial, the parties and the defense counsel presented a great deal of evidence related to some of the events described in the above counts of the Amended Indictment, from which the Panel was able to conclude that the events described in some of the counts took place. With respect to other events, there was insufficient evidence to conclude beyond a reasonable doubt that these took place at all. In other cases, there was insufficient evidence to confirm that events took place in the manner described in the Amended Indictment. The Panel,

however, is not authorized to change the factual description of the offense of which the Accused has been acquitted in such a way that they are placed in a more disadvantageous and difficult position than the one in the Amended Indictment.

853. The Panel did not conclude that there was sufficient evidence to find that the Accused Senad Dautović was responsible for the criminal offenses committed at the locations mentioned in the above counts of the Amended Indictment.

854. Although the Panel established that Senad Dautović was one of the commanders of the Unified Command, rather than the Commander of the Unified Command of the ARBiH, the Panel is of the view that at the relevant time Senad Dautović was superior only to members of the civilian police. Counts 1(a), 1(b), 1(c), 2(a), 2(b), 2(c), 3, 4, 5(a), 5(b), 5(d) and 6 of the Amended Indictment refer to members of the Army of BiH, the subordinated members of the SJB Bugojno and Bugojno Defense Staff, as well as members of the Military Police of the 307th Motorized Brigade. The Panel did not find that Senad Dautović had effective control over the military. The Prosecution failed to prove that at the relevant time, as a result of the fact that he was one of the commanders of the Unified Command, he had effective control over members of the Army of BiH, Bugojno Defense Staff and members of the Military Police of the 307th Motorized Brigade.

855. It is also important to note that the Panel did not find that members of SJB Bugojno over whom Senad Dautović did have effective control were present at the locations specified in counts 1(a), 1(b), 1(c), 2(a), 2(b), 2(c), 3, 4, 5(a), 5(b), 5(d) and 6. Accordingly, the Panel acquitted Senad Dautović of the charges described in these counts of the Amended Indictment.

856. Moreover, counts 1(a), 1(b), 1(c), 2(a), 2(b), 2(c), 3, 4, 5(a), 5(b), 5(d), 6, 9(g) and 9(i) allege that Senad Dautović committed the acts charged against him knowingly and with an intent to execute the common purpose and plan of a joint criminal enterprise of which he was aware. The Prosecution failed to establish beyond a reasonable doubt that Senad Dautović participated in the joint criminal enterprise described in detail in these counts, and therefore the Panel acquitted Senad Dautović of the charges under these counts.

857. As for Count 9(g) of the Amended Indictment, the Panel finds that the acts

described therein do not constitute inhuman treatment of detainees. The Panel also concluded that under this count of the Amended Indictment it was not specified as to how the detainees taken for labor had suffering inflicted upon them. Moreover, the Prosecution failed to prove beyond a reasonable doubt that Senad Dautović, as part of the joint criminal enterprise, ordered and approved the use of detainees for forced labor.

858. In their testimony, witnesses Dragan Boškić,¹⁰⁴⁸ Dragan Nevjestić,¹⁰⁴⁹ Rade Marijanović,¹⁰⁵⁰ Berislav Džalto,¹⁰⁵¹ Slaven Brajković,¹⁰⁵² Dragan Kasalo¹⁰⁵³ and Ilija Dujmović¹⁰⁵⁴ stated that they were taken to perform labor. However, these witnesses did not state that they were subjected to any inhuman treatment. Work can be required in these circumstances, as long as it is not dangerous. What is important are the working conditions.

859. Witness Rade Marijanović testified that he went to “dig out dead bodies in the woods together with Asim, who was some sort of commander”. This witness further stated that they were doing this work every day and that Kasalo, Ivica Visković and others were together with him on the team.¹⁰⁵⁵ As for the witnesses below, they did not mention in their testimony that they were ill-treated.

860. Witness Dragan Boškić testified that during the detention at the Gymnasium they were removed during the day to take out food supplies from the warehouse and sweep garbage off the streets, whereupon they would be returned to the gym inside the Gymnasium building.¹⁰⁵⁶ Witness Berislav Džalto testified that he performed labor “voluntarily” and that they were collecting dead bodies of the killed persons.¹⁰⁵⁷

861. Witnesses who testified in relation to the circumstances from count 9(g) of the Amended Indictment did not complain of ill-treatment when they were taken from the Gymnasium for labor.

¹⁰⁴⁸ Dragan Boškić (20 March 2008).

¹⁰⁴⁹ Dragan Nevjestić (25 March 2009).

¹⁰⁵⁰ Rade Marijanović (11 March 2009).

¹⁰⁵¹ Berislav Džalto (25 June 2008).

¹⁰⁵² Slaven Brajković (3 September 2008).

¹⁰⁵³ Dragan Kasalo (12 November 2008).

¹⁰⁵⁴ Ilija Dujmović (4 February 2009).

¹⁰⁵⁵ Rade Marijanović (11 March 2009).

862. Witness Asim Balihodžić testified that the Bugojno Municipality Wartime Presidency set up a commission for the identification of persons killed during the conflict on 25 July 1993, that he received the decision on the setting up of the commission from Senad Dautović, and that the decision informed him that he was one of the members of the commission.¹⁰⁵⁸ Furthermore, witness Balihodžić testified that he proposed that Croat detainees, who were familiar with working with dead bodies, be included in the team's work.¹⁰⁵⁹ "We also buried the dead"- witness Balihodžić said. He received the approval to engage Croat detainees from his superior Senad Dautović.¹⁰⁶⁰ This witness stated: "However, I'm telling you now that the rationale behind this idea was my conviction that I could count on the assistance of my buddies, who were in prison at the time, and who had all been on the police force before, to help me in the work with the dead bodies".¹⁰⁶¹ The witness then went on to say that he was told that he was responsible for safety of these persons in the field. He added that they were always accompanied by a military policeman for their safety, as well as the safety of detainees.¹⁰⁶²

863. Article 5(1)(e) of the Additional Protocol II to the Geneva Conventions prescribes that

[...] persons deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained...shall, if made to work, have the benefit of working conditions and safeguards similar to those enjoyed by the local civilian population.

864. It follows from the above that persons who were detained in the Gymnasium were in the field together with Asim Balihodžić working together with him on the identification and burial of dead bodies. The Prosecution failed to prove beyond a reasonable doubt that the detainees were subjected to inhuman treatment and that they suffered serious mental or physical suffering.

865. As for count 9(i) of the Amended Indictment, the Prosecution failed to prove beyond a reasonable doubt that the Special Purpose Unit of SJB Bugojno was

¹⁰⁵⁶ Dragan Boškić (20 March 2008).

¹⁰⁵⁷ Berislav Džalto (25 June 2008).

¹⁰⁵⁸ Asim Balihodžić (14 January 2009).

¹⁰⁵⁹ Asim Balihodžić (14 January 2009).

¹⁰⁶⁰ Asim Balihodžić (14 January 2009).

¹⁰⁶¹ Asim Balihodžić (14 January 2009).

quartered on the premises of the Agricultural Cooperative. Moreover, the Prosecution failed to prove beyond a reasonable doubt that the incident referred to in that count happened in the manner described in the Amended Indictment. Witness Dragan Nevjestić¹⁰⁶³ testified about the circumstances surrounding this incident, but his testimony was not supported by other evidence and could not be corroborated with other evidence in the case-file.

866. Article 3 of the CPC of BiH provides for the presumption of innocence and *in dubio pro reo*. Pursuant to this, the Court is obliged to render an acquittal in case when doubt as to the guilt of the accused remains. The accused shall be acquitted not only when the innocence of the accused has been proven, but also when the culpability of the accused has not been proven beyond a reasonable doubt. Where there is reasonable doubt as to the relevant facts, the presumption of innocence shall prevail and be applied to the benefit of the accused. The Court must establish facts with certainty and without any reasonable doubt as to their existence.

867. The burden of proof is on the Prosecution, which must prove culpability beyond a reasonable doubt. The Panel “interprets the standard 'beyond reasonable doubt' to mean a high level of probability; it does not mean certainty or proof beyond the shadow of a doubt”.¹⁰⁶⁴ Again, any ambiguity or doubt must be resolved in favor of the accused in accordance with the principle of *in dubio pro reo*.

C. SECTION 13 OF THE OPERATIVE PART OF THE VERDICT

868. The Panel finds that the Prosecution has failed to prove beyond reasonable doubt Senad Dautović's guilt of the acts described in Count 13 of the operative part of the Verdict, that is, Count 7 of the Amended Indictment.¹⁰⁶⁵

869. It was established that Miro Kolovrat had been detained on the premises of the Gymnasium¹⁰⁶⁶ and that some members of SJB Bugojno were accommodated in

¹⁰⁶² Asim Balihodžić (14 January 2009).

¹⁰⁶³ Dragan Nevjestić (25 March 2009).

¹⁰⁶⁴ *Prosecutor v. Halilović*, IT-01-48-T, Judgment, 16 November 2005, fn 24.

¹⁰⁶⁵ Prosecution amended Indictment dated 29 June 2011.

¹⁰⁶⁶ Željko Lozić (6 May 2009).

that building (paragraphs 398 - 406). Based on this, the Panel concluded that members of the Bugojno SJB guarded the persons detained on these premises.

870. It is not clear from the account of facts of the Indictment whether the Prosecution charges Dautović under this Count with unlawful detention of the aggrieved party.

871. However, even if that is the case, the Panel was not able to determine on the Prosecution evidence whether there were grounds for detaining Miro Kolovrat, or what his status was, or how long Miro Kolovrat was imprisoned in the Gymnasium, or under what circumstances he was killed, all of which is necessary in order to determine whether Senad Dautović is guilty of the acts charged in this Count of the Indictment.

872. In addition, no evidence was presented based on which the Court could determine the circumstances surrounding the death of Miro Kolovrat, that is, that there is a causal link between his removal from the premises of the Gymnasium and his death.

873. There is contradictory evidence to this effect. Gordan Raić¹⁰⁶⁷ confirmed the allegations from the Indictment only after being presented with the statement he gave in the investigation.¹⁰⁶⁸

874. Exhibit T-623 (Information aimed at checking the state of affairs, SJB Bugojno dated 20 August 1993) shows that Miro Kolovrat was shot dead upon being taken out of the Gymnasium and this exhibit also contains a handwritten note that he was killed by HVO members after being taken out for negotiations.¹⁰⁶⁹ According to exhibit O-13/4 (List of examined bodies and their identification), he was killed by a sniper of the HVO members who were quartered in the Ljubljanska Bank.¹⁰⁷⁰

¹⁰⁶⁷ Gordan Raić (13 February 2008).

¹⁰⁶⁸ T-105 (Record of Examination of Damir Kolovrat No. KT-RZ-162/05 dated 25 October 2007).

¹⁰⁶⁹ T-623 (Information aimed at checking the state of affairs, SJB Bugojno No. 19-2/01-1-278/93 dated 20 August 1993, with the enclosed list of deceased persons).

¹⁰⁷⁰ O-13/4 (List of examined bodies and their identification by the Commission for Identification of the Persons Killed in the Conflict between the ARBiH and the HVO).

875. The son of victim Miro Kolovrat, Damir Kolovrat,¹⁰⁷¹ gave a totally different account about this incident. At first, he also had the information that his father had been killed in front of the Ljubljanska Bank, however, at a later stage he came to know that his father was found dead in an apartment.¹⁰⁷²

876. The Panel was not satisfied that Gordan Raić's testimony in this part as proves the factual allegations from the Indictment beyond a reasonable doubt. At first, Gordan Raić did not put forward any knowledge about this incident, and only later he unconvincingly corroborated the allegations from the statement he gave in the investigation. There is no evidence in support of his allegations and in making such a decision, the Panel also relied on the fact that son of the victim, Damir Kolovrat, who certainly has the strongest motivation to reveal the circumstances surrounding his father's death, has completely different information about his fate.

877. In view of the foregoing, the Panel decided to acquit Senad Dautović of the responsibility for the commission of the criminal offence pleaded under this Count of the Indictment.

D. SECTION 15(A) OF THE OPERATIVE PART OF THE VERDICT

878. Under this count of the Amended Indictment Musajb Kukavica was charged that in the period from the establishment of the FC *Iskra* stadium camp in August until approximately mid-September 1993 and from 21 September 1993 until mid-March 1994, as the commander of camp security, he was very frequently present at the time of selection of detainees for labor and sometimes he even decided which detainees will go to perform labor, although he knew and was aware that such acts against prisoners were prohibited and that detainees might be killed or wounded while performing this labor, whereupon detainees were taken to perform labor across Bugojno where they were sweeping the streets and performing other physical labor or were taken to the front lines between the Army of RBiH and the Army of Republika Srpska and the HVO where they dug trenches, communication trenches and dugouts, and very often they were used as 'human shields'.

¹⁰⁷¹ Damir Kolovrat (4 March 2009).

¹⁰⁷² Damir Kolovrat (4 March 2009).

879. By these acts, as alleged in the Amended Indictment, Musajb Kukavica allegedly committed the criminal offense of War Crimes against Civilians under Article 173(1)(c) and (f) of the CC of BiH, as read with Article 29 of the CC of BiH (co-perpetration).

880. It is not disputed that Musajb Kukavica was the commander of camp security at the FC *Iskra* stadium camp during the relevant period (paragraph 475).

881. Additionally, it clearly follows from the adduced evidence that detainees were taken from the FC *Iskra* stadium camp to perform the labor described in Section 15(a) of the operative part of the Verdict, and that some detainees were either killed or wounded while performing labor. Many witnesses testified in relation to these circumstances.¹⁰⁷³

882. There was credible testimony that Musajb Kukavica was present on the occasions when the military came to take detainees to perform forced labor. Sometimes it happened that soldiers directly selected the detainees and at other times it was done by guards, and occasionally Kukavica himself called out names from the list or selected the detainees who were then taken to perform labor. This is corroborated by the testimony of some witnesses.¹⁰⁷⁴

883. Musajb Kukavica was charged with having committed the referenced criminal offense as a co-perpetrator. In this part, the Panel also considered potential application of Article 29 of the CC of BiH in view of the fact that it is not bound by the Prosecution's legal qualification of the offense.

884. Article 29 of the CC of BiH (Accomplice or Co-perpetration) stipulates as follows:

If several persons who, by participating in the perpetration of a criminal offense or by taking some other act by which a decisive contribution has been made to its perpetration, have jointly perpetrated a criminal offense, shall each be punished as prescribed for the criminal offense.

¹⁰⁷³ Ilija Udovičić (3 September 2008); Gordan Raić (13 February 2008); Berislav Jezidžić (21 January 2009); Viktor Maros (17 December 2008); Slaven Brajković (3 September 2008); Miroslav Zelić (20 February 2008); Dragan Boškić (20 March 2008).

¹⁰⁷⁴ Ljuban Živko (17 December 2008); Dragan Boškić (20 March 2008); Stjepan Radoš (27 August 2008); Ivica Topić (5 March 2008); Damir Kolovrat (4 March 2009); Željko Ištuk (23 April 2008).

885. Article 31 of the CC of BiH (Accessory or Aiding and Abetting) stipulates as follows:

(1) Whoever intentionally helps another to perpetrate a criminal offense shall be punished as if he himself perpetrated such offense, but the punishment may be reduced.

(2) The following, in particular, shall be considered as helping in the perpetration of a criminal offense: giving advice or instructions as to how to perpetrate a criminal offense, supplying the perpetrator with tools for perpetrating the criminal offense, removing obstacles to the perpetration of criminal offense and promising, prior to the perpetration of the criminal offense, to hide the perpetrator, the tools used for perpetrating the criminal offense, traces of the criminal offense, or goods acquired by perpetration of the criminal offense.

886. The Panel considers a “decisive contribution” to be a requirement for the application of Article 29 of the CC of BiH, and a “substantial contribution” to be a requirement for the application of Article 31 of the CC of BiH.

887. The Panel emphasizes the position Musajb Kukavica held during the relevant period of time; he was commander of the camp security, and directly subordinated to the camp warden at the FC *Iskra* stadium camp (initially Mehmed Sadiković, but as of 22 September 1993 Nisvet Gasal (paragraph 475)).

888. Enes Handžić described how detainees from the FC *Iskra* stadium camp were used to perform labor. Handžić sent requests for labor to the Camp Administration, which in turn selected detainees, who were then taken to different locations.¹⁰⁷⁵

889. Co-perpetration requires that each of the co-perpetrators plays a role in the perpetration of a given offense, which is decisive to the commission of the offense or realization of the common plan. It is the importance of his role from which his functional control over the offense as a whole is derived, inasmuch as the offense could not be perpetrated as planned should any of the co-perpetrators fail to carry out their part.

890. On the other hand, for specific acts to amount to aiding and abetting, they have to contribute to the perpetration of the criminal offense, make a substantial contribution to the offense, and support the commission of the offense.

¹⁰⁷⁵ Enes Handžić (1 June 2011).

891. In light of his position during the relevant period and his actions, Musajb Kukavica was surely not a person without whom the criminal offense in question could not be perpetrated.

892. Ivan Keškić,¹⁰⁷⁶ Viktor Maros,¹⁰⁷⁷ Vlatko Brnas,¹⁰⁷⁸ Miroslav Marjanović,¹⁰⁷⁹ Ivan Kapetanović¹⁰⁸⁰ and many others consistently testified that calling out the names and selecting detainees for labor was regularly done by individuals other than Kukavica.

893. Having considered the cited provisions of the law (Articles 29 and 31 of the CC of BiH), the Panel concludes that the actions of Musajb Kukavica (calling out of the names of detainees to be taken for labor) were neither decisive within the meaning of Article 29 of the CC of BiH, nor substantial within the meaning of Article 31 of the CC of BiH. The referenced criminal offense would surely have been perpetrated even if Musajb Kukavica had not participated in the selection of detainees for labor.

E. SECTION 15(B) OF THE OPERATIVE PART OF THE VERDICT

894. Under this count of the Amended Indictment, Musajb Kukavica is charged that in the period from the establishment of the FC *Iskra* stadium camp in August until approximately mid-September 1993 and from 21 September 1993 until mid-March 1994, as the commander of the camp security, he committed the criminal offense of War Crimes against Civilians in violation of Article 173(1)(c), as read with Article 180(1) and (2) of the CC of BiH and Article 29 of the CC of BiH, and with respect to torture at the BH Bank, the criminal offense of War Crimes against Civilians in violation of Article 173(1)(c), as read with Article 180(1) and Article 31 of the CC of BiH, in the manner described in detail in Section 15(b) of the operative part of this Verdict (count 10(c) of the Amended Indictment).

¹⁰⁷⁶ Ivan Keškić (14 May 2008).

¹⁰⁷⁷ Viktor Maros (17 December 2008).

¹⁰⁷⁸ Vlatko Brnas (1 October 2008).

¹⁰⁷⁹ Miroslav Marjanović (9 July 2008).

¹⁰⁸⁰ Ivan Kapetanović (19 March 2008).

895. After reviewing all the adduced evidence, the Panel concluded that the Prosecution failed to establish Musajb Kukavica's guilt for this criminal offense beyond a reasonable doubt.

896. It clearly follows from the adduced evidence that a large number of detainees were beaten at the FC *Iskra* stadium camp, both in the period from the camp's establishment in August 1993 through approximately mid-September,¹⁰⁸¹ and in the period from 22 September 1993 through mid-March 1994 (paragraphs 522 - 571).

897. The Panel has already explained the camp's organizational structure and provided a detailed explanation of the relationship between the camp warden and persons who performed specific duties in the camp (paragraphs 589 - 606).

898. Nisvet Gasal received information about events of the preceding day and reports on the number of detainees present in the camp directly from the guard shift leaders (paragraph 514).

899. The Panel has already made a finding that Nisvet Gasal knew about the beating of detainees within the compound of the FC *Iskra* stadium camp and that he failed to take necessary and reasonable measures to prevent the abuse of detainees at the camp (paragraphs 607 - 646).

900. There is no evidence that Musajb Kukavica personally participated in any of the beatings. There is no evidence that he took some detainees out of the rooms in which they were detained to the stands or the pitch to be beaten.

901. Nisvet Gasal testified that Musajb Kukavica informed him about the beating of Kazimir Kaić, describing it in the following way:

Musajb Kukavica was down there at the stadium the entire time. He spent his full working hours there. And we learnt, in fact, he learnt that this beating happened. Accordingly, he informed me and said that he had information it happened during the MUP's shift. There were problems with this shift. Kukavica complained of them the most. He was even saying that he didn't want to work there any more...¹⁰⁸²

¹⁰⁸¹ See e.g. Dragan Kasalo (12 November 2008.); Stjepan Radoš (27 August 2008).

¹⁰⁸² Nisvet Gasal (17 February 2010).

902. Nisvet Gasal claims that Musajb Kukavica informed him about the beating of Kazimir Kaić at the camp and that subsequently the entire shift was dismissed.¹⁰⁸³ The Panel concluded that Gasal was truthful when he spoke of Kukavica's behavior, as his testimony was consistent in this part with the testimony of other witnesses.

903. There was no evidence that Musajb Kukavica had any personal interest in not informing the camp warden about the beatings at the camp. There was no evidence of him wanting to protect someone by not reporting the beatings to the warden or of him behaving generally in a cruel manner. Moreover, it is clear that that on at least one occasion he informed Nisvet Gasal about the beating of detainees. The Panel has no reason to doubt that he informed the camp warden every time he was made aware of beatings, including the period when Mehmed Sadiković was the warden. In this regard, the Prosecution failed to proffer evidence that would lead the Panel to conclude that he failed to carry out his duty to report.

904. Additionally, the Prosecution failed to present evidence from which the Panel could establish beyond a reasonable doubt that Musajb Kukavica was aware detainees were going to be tortured at the BH Bank as a result of his calling out their names.

905. It is clear that during the relevant period of time a large number of detainees were taken for interrogation to the BH Bank.¹⁰⁸⁴

906. After they were taken to the BH Bank for interrogation, some detainees were released,¹⁰⁸⁵ while others returned to the camp without having sustained any injuries.¹⁰⁸⁶

907. The Panel cited above Article 29 of the CC of BiH (Accomplice or Co-perpetration) and Article 31 of the CC of BiH (Accessory or Aiding and Abetting) (paragraphs 884 - 885), and it is evident that the Prosecution has failed to prove

¹⁰⁸³ Nisvet Gasal (17 February 2010).

¹⁰⁸⁴ T-152 (Daily report of the OG West Military Police dated 17 November 1993); T-162 (Daily report of the OG West Military Police dated 8 January 1994); T-166 (Daily report of the OG West Military Police dated 16 January 1994); T-182 (Command of the 307th Brigade, Security Organ dated 3 September 1993).

¹⁰⁸⁵ Edin Ćorhusić (2 June 2010); Nisvet Gasal (3 March 2010); Besim Cetin (3 February 2010).

¹⁰⁸⁶ Kazimir Kaić (8 April 2009); Ilija Udovičić (3 March 2008); Suvad Delić (13 January 2010); Lejla Mlaćo Gurbeta (23 June 2010).

beyond a reasonable doubt Musajb Kukavica's participation in the commission of the offenses charged against him.

908. No evidence suggests that Musajb Kukavica knew that detainees were going to be tortured after being taken to the BH Bank.

909. Additionally, the Prosecution failed to establish beyond a reasonable doubt that Musajb Kukavica knew that some detainees were tortured on the premises of the BH Bank, which would make it his duty to report such treatment of these persons to his superior. Moreover, it follows from the testimony of witnesses Vlatko Brnas,¹⁰⁸⁷ Josip Kalajica,¹⁰⁸⁸ Ivica Klarić¹⁰⁸⁹ and Ivan Faletar¹⁰⁹⁰ that some detainees were kept on the premises of the BH Bank for a longer time, with the consequence that their injuries were not even visible upon their return to the FC *Iskra* stadium camp (their injuries having healed by the time they were returned to the camp).

910. Based on all the above, in the absence of evidence the Panel acquitted Musajb Kukavica of charges for the commission of this criminal offense.

F. SPECIFYING AND OMITTING CHARGES WITH REGARD TO THE CONVICTING PART

911. In Section 5(a) of the operative part of the Verdict (Count 10(b) of the Amended Indictment), the Panel specified or omitted portions of the Indictment that concern Nisvet Gasal to better reflect the evidence adduced at the main trial.

912. In addition to the part that concerns the acquittal of Musajb Kukavica and Senad Dautović, which will be discussed in more detail below, the Panel omitted from the Indictment the portion concerning labor performed by detainees across Bugojno, more specifically sweeping the streets, chopping wood for the needs of members of the ARBiH and performing other physical labor.

913. With respect to this part, the Panel concludes that this labor was not unlawful within the meaning of Article 5(1)(e) of the Additional Protocol II to the Geneva Conventions, given that there is no evidence that detainees were subjected to

¹⁰⁸⁷ Vlatko Brnas (1 October 2008).

¹⁰⁸⁸ Josip Kalajica (15 October 2008).

¹⁰⁸⁹ Ivica Klarić (27 February 2008).

inhuman treatment while performing this labor. As a result, the Panel decided to omit this portion from the Indictment.

914. The Panel also decided to omit portion of the Indictment that concerns Nisvet Gasal's knowledge and awareness that detainees might be killed while performing labor at the front lines. The Panel concluded that it has been established beyond a reasonable doubt that Nisvet Gasal was aware that detainees might be wounded as a result of being taken to perform labor, and therefore the Panel considers it redundant and unnecessary to make a finding that detainees could be killed while performing labor.

915. In addition to the above, the Panel omitted from the Indictment the portion in which specific locations where the detainees performed labor are listed one after the other. In this part, the Panel notes that the place of commission of this criminal offense is determined precisely enough with the following formulation: “[...] were taken to the front lines between the Army of RBiH and the VRS and the HVO in the areas of Donji Vakuf, Gornji Vakuf/Uskoplje, Kupres and other places [...]”. As a result, the Panel omitted this portion of the Indictment.

916. Finally, the Panel did not find any credible evidence that the detained persons of Croat ethnicity were used as ‘human shields’. There was no evidence adduced to support this allegation.

917. Some witnesses testified that they were used as human shields’.¹⁰⁹¹ However, these witnesses did not actually explain that they were taken to the front lines and deliberately used to protect the positions of the ARBiH. Detainees were used at these locations to perform forced labor (paragraphs 483 - 497) but there was no specific evidence adduced that would show how anyone was used as a shield. Rather, the evidence primarily showed that detainees were involved in digging trenches at or near the front lines.

918. In Section 5(b) of the operative part of the Verdict (Count 10(c) of the Amended Indictment), the Panel specified or omitted portions of the Prosecution’s

¹⁰⁹⁰ Ivan Faletar (3 March 2010).

¹⁰⁹¹ Witness B (26 November 2008); Stipica Džapić (27 February 2008).

Indictment that concern Nisvet Gasal to better reflect the evidence adduced at the main trial.

919. First, the Panel clarified the Indictment in the part that concerns persons who committed abuse at the camp.¹⁰⁹² Where it is stated that “other members of the Army of RBiH” were involved in beating the detainees is replaced with “other unknown persons”, inasmuch as this formulation includes a wider range of individuals.

920. In this part the Panel also omitted the portion of the Indictment stating that the Accused “still failed to do anything to prevent this torture, which they could have done by taking control of the keys to the rooms in which the captives were detained [...]”. The Panel could not establish from the adduced evidence that the beating of detainees would have stopped had the Accused placed the keys ‘under control’. In fact, on the last night Suvad Delić took the keys to the detainee’s rooms. In spite of this, detainee Fabijan Lovrić was beaten that night (paragraphs 566 - 571). In the operative part of the Verdict, the Panel noted the manner in which Nisvet Gasal could have prevented the abuse in the camp, namely that “he could have done [it] by sanctioning or reporting his subordinates and other offenders [...]”. Based on the above, the Panel decided to omit this portion from the Indictment.

921. In addition the Panel characterized the acts of Nisvet Gasal, which were repeatedly referred to as “torture” in the Indictment, as acts of “abuse” given that the Panel did not find, based on the adduced evidence, that the referenced criminal offense was committed through acts of “torture”. There was no indication that the beatings were an attempt to elicit information and therefore did not satisfy the requisite elements of this offense.

922. Moreover, based on testimonial and other evidence, the Panel could not establish the exact period when Dragan Erkapić and Miroslav Fabulić were beaten. Several witnesses were consistent in their testimony that these two detainees were beaten during their detention at the FC *Iskra* stadium camp.¹⁰⁹³ However, as already stated above, the Panel was unable to determine with certainty whether the beatings of these persons happened before or after 22 September 1993, when Nisvet Gasal

¹⁰⁹² The Amended Indictments refers to “torture”.

¹⁰⁹³ Ivica Gunjača (15 October 2008); Josip Kalajica (15 October 2008); Ivo Kujundžić (16 April 2008).

assumed the duty of the camp warden. For this reason the Panel decided to omit their names from the Indictment.

923. In addition, the Panel did not accept the Prosecution's allegations concerning the beating of detainee Željko Lozić between 22 September 1993 and 19 March 1994.

924. Željko Lozić testified that he was captured on 20 July 1993 and then taken to the Gymnasium where he spent around 20 days. During the attempt to transfer this detainee from the Gymnasium to some other location Željko Lozić stated that he was taken to the hospital where he spent another 20 days (approximately). After that, he was taken to the FC *Iskra* stadium camp, where one of the guards at the entrance singled him out and hit him.¹⁰⁹⁴

925. The Panel does not doubt the veracity of this witness's testimony in relation to his beating. However, following the chronology of events it is clear that the beating of this person happened during the period before Gasal's assumption of the duties of the camp warden at the FC *Iskra* stadium camp. This becomes even more evident in light of the fact that after he had been brought to the camp, Željko Lozić was taken to perform labor in Prusac,¹⁰⁹⁵ where he witnessed detainees being taken to the BH Bank. This event happened prior to Gasal's arrival and his appointment to the post of camp warden (paragraph 475).

926. The Prosecution did not adduce evidence from which the Panel could conclude beyond a reasonable doubt that Nisvet Gasal knew or was aware of the possibility that individuals taken to the BH Bank for interrogation would be tortured.

927. It is clear that during the relevant period of time a large number of detainees were taken to the BH Bank for interrogation.¹⁰⁹⁶

¹⁰⁹⁴ Željko Lozić (6 May 2009).

¹⁰⁹⁵ Željko Lozić (6 May 2009).

¹⁰⁹⁶ T-152 (Daily report of the OG West Military Police dated 17 November 1993); T-162 (Daily report of the OG West Military Police dated 8 January 1994); T-166 (Daily report of the OG West Military Police dated 16 January 1994); T-182 (Command of the 307th Brigade, Security Organ dated 3 September 1993).

928. After they were taken to the BH Bank for interrogation some detainees were released,¹⁰⁹⁷ while others returned to the camp without having sustained any injuries.¹⁰⁹⁸

929. The Panel cited above Article 29 of the CC of BiH (Co-perpetratorship or Accomplice Liability) and Article 31 of the CC of BiH (Aiding and abetting or Accessory Liability) (paragraphs 884 - 885), and it is evident that both of these provisions require that a perpetrator has an intent to commit or to assist in the commission of the criminal offense.

930. There is no evidence to suggest that Nisvet Gasal knew that detainees were going to be tortured after being taken to the BH Bank.

931. Additionally, the Prosecution failed to prove that Nisvet Gasal knew that some detainees had been tortured on the premises of the BH Bank, which would have implicated his duty to report such treatment of these persons to his superior. Moreover, it follows from the testimony of witnesses Vlatko Brnas,¹⁰⁹⁹ Josip Kalajica,¹¹⁰⁰ Ivica Klarić¹¹⁰¹ and Ivan Faletar¹¹⁰² that some detainees were kept on the premises of the BH Bank for a longer time, which allowed their wounds to heal and explains why their injuries would not have been visible upon their return to the FC *Iskra* stadium camp.

932. In Section 5(a) of the operative part of the Verdict (Count 10(b) of the Amended Indictment), in addition to clarifying the Indictment with regard to the convicting part of the Verdict, the Panel omitted portions that concern Senad Dautović's participation in the commission of the criminal offense of War Crimes against Civilians under Article 173(1)(c) and (f) of the CC of BiH, as read with Article 180(1) and Article 29 of the CC of BiH.

¹⁰⁹⁷ Edin Ćorhusić (2 June 2010); Nisvet Gasal (3 March 2010); Besim Cetin (3 February 2010);
¹⁰⁹⁸ Kazimir Kaić (8 April 2009); Ilija Udovičić (3 March 2008); Suvad Delić (13 January 2010);
Lejla Mlačo Gurbeta (23 June 2010).
¹⁰⁹⁹ Vlatko Brnas (1 October 2008).
¹¹⁰⁰ Josip Kalajica (15 October 2008).
¹¹⁰¹ Ivica Klarić (27 February 2008).
¹¹⁰² Ivan Faletar (3 March 2010).

933. Further, the Panel holds that the Prosecution failed to prove Senad Dautović's participation in a joint criminal enterprise to force the detained persons of Croat ethnicity to perform labor and subject them to inhuman treatment.

934. In addition, based on the adduced evidence, the Panel did not find that Senad Dautović ordered or approved any forced labor as of 13 November 1993, the day he assumed the position of Assistant Commander for Security in the OG *West* (paragraph 234).

935. The Panel did find that at least on one occasion after 13 November 1993 detainees were taken to perform forced labor in the period after (paragraphs 495), but there is no evidence that the labor was performed pursuant to Senad Dautović's order or with his approval, as alleged in the Indictment.

936. In Section 5(b) of the operative part of the Verdict (Count 10(c) of the Amended Indictment), in addition to clarifying the Indictment with regard to the convicting part of the Verdict, the Panel omitted portions that concern Senad Dautović's participation in the criminal offense of War Crimes against Civilians under Article 173(1)(c) of the CC of BiH, as read with Article 180(1) and Article 29 of the CC of BiH.

937. Based on the adduced evidence, the Panel did not find that Senad Dautović participated in a joint criminal enterprise with an aim to torture the detained persons of Croat ethnicity at the FC *Iskra* stadium camp.

938. In order to clarify the operative part of the Verdict, the Panel decided that charges against Senad Dautović described in counts 10(b) and 10(c) of the Amended Indictment should be merged into one section (Section 1 of the operative part of the Verdict).

939. Pursuant to the Indictment, Senad Dautović was charged with consciously and willingly participating in a joint criminal enterprise of the Bugojno Municipality Wartime Presidency for the purpose of, *inter alia*, singling out persons believed to be extremists among the detained persons of Croat ethnicity and killing them.

940. Counts 10(b) and 10(c) describe some of the proven allegations. Therefore, given the logical connection between these allegations and to improve the clarity of

the Verdict, the Panel decided to merge the contents of these two counts.

941. The Indictment of the Prosecutor's Office describes the circumstances of death of Vlatko Kapetanović, Mario Zrno, Mladen Havranek, Miro Kolovrat, Željko Tabaković, Davor Jezidžić, Niko Džaja, Mihovil Strujić, Jadranko Gvozden, Frano Jezidžić, Stipica Zelić, Miroslav Dilber, Ante Markulj, Dragan Erkapić, Dragan Miličević, Ivo Miloš, Perica Kovačević, Zoro Galić, Zdravko Juričić, Niko Zlatunić, Nikica Miloš (son of Jozo), Nikica Miloš (son of Dragutin), Perica Crnjak and Branko Crnjak, a total of 24 persons of Croat ethnicity.¹¹⁰³

942. The Panel has found there was a JCE to kill the alleged extremists. According to the evidence adduced, the group of alleged extremists consisted of between 23 or 26 persons of Croat ethnicity (paragraph 267). The Panel will clarify whether all the persons named in the indictment or some of them were killed as part of the JCE whose plan and purpose was to kill Croats deemed extremists.

a. Murder of Vlatko Kapetanović

943. According to the Indictment, Vlatko Kapetanović was taken out of the premises of the Marksist center – Nuns' Cloister and thrown into the trunk of a Mercedes by members of the Military Police of the 307th Motorized Brigade, including Alija Osmić, sometime between 25 July 1993 and early August 1993, and taken to a location near the place of Guvno, where he was killed by members of the Military Police.¹¹⁰⁴

944. The Panel has already established that Senad Dautović was not responsible for the murder of Vlatko Kapetanović as he had no effective control over the military at this time (paragraph 854).

945. However, besides these allegations in this count of the Indictment, Senad Dautović is also charged with participation in the wider JCE of the Wartime Presidency of the Bugojno Municipality, whose plan and purpose, among other things, was to torture and kill Croats.

¹¹⁰³ Amended Indictment of the Prosecutor's Office of BiH, 29 June 2011.

¹¹⁰⁴ Count 2(b) of the amended Indictment.

946. The Panel finds that there is no evidence to establish that Vlatko Kapetanović was one of the persons considered an extremist by the Wartime Presidency of the Bugojno Municipality during the relevant time.

947. Vlatko Kapetanović was killed after the decision to execute the alleged extremists of Croat ethnicity was adopted at the Wartime Presidency session. However, the list of Croats considered “extremists” was, without a doubt, drafted in the subsequent period (paragraphs 261). There is no evidence that Vlatko Kapetanović was deemed to be an extremist by the Wartime Presidency of the Bugojno Municipality. The manner in which these alleged extremists were treated (paragraphs 272 - 273) is noteworthy because it was not similar in any way to the circumstances of Vlatko Kapetanović's death.

b. Murder of Mario Zrno

948. According to the Indictment, Mario Zrno was killed between 25 July 1993 and August 1993, when he was taken from the Marxist Center-Nun's Cloister to the settlement of Vrbanja to perform labor. There he succumbed to injuries inflicted on him by members of the RBiH Army and Bosniak civilians.¹¹⁰⁵

949. The Panel has already established that Senad Dautović was not responsible for the murder of Mario Zrno, as he had no effective control over the military at this time (paragraph 854).

950. According to the Indictment, Zrno was killed as a part of the JCE whose purpose and plan was to use Croats for forced labor and treat them inhumanely. The Prosecution failed to prove that Dautović participated in a JCE whose plan and purpose was to coerce Croat prisoners to perform labor and treating them inhumanely. Accordingly, there is no evidence that Dautović had joined into such a plan or bore individual criminal responsibility for this murder.

951. There is no evidence that Mario Zrno was considered an extremist by the Wartime Presidency of the Bugojno Municipality during the relevant period. The list of extremists was prepared later (paragraph 261). The circumstances of his death do

¹¹⁰⁵ Count 2(c) of the amended Indictment.

not correspond to the treatment of persons who were considered to be extremists by the Wartime Presidency of the Bugojno Municipality (paragraphs 272 - 273).

c. Murder of Mladen Havranek

952. According to the Indictment, Mladen Havranek succumbed to the injuries inflicted on him while he was beaten at the *Slavonija DI* furniture showroom by members of the SJB Bugojno, RBiH Army and the Bugojno Defense Staff between 24 July 1993 and approximately mid-August 1993.¹¹⁰⁶ The Panel recalls that there was no evidence adduced that members of the SJB Bugojno were present on these premises (paragraph 854). As a result, the Panel has already established that Senad Dautović was not responsible for the murder of Mladen Havranek, as he had no effective control over these men at the time.

953. Nor was there evidence that Mladen Havranek was considered to be an extremist by the Wartime Presidency of the Bugojno Municipality. Moreover, the Prosecution did not establish any link between the death of Mladen Havranek and the list of prisoners who were considered to be extremists, and there was no similarity between his treatment and that of the persons deemed to be extremists (paragraphs 272 - 273).

d. Murder of Miro Kolovrat

954. The Panel has already noted that it was unable to establish, based on the Prosecution evidence, the circumstances of Mirko Kolovrat's death (paragraphs 868 - 877). Accordingly, there was no evidence pointing to Senad Dautović's responsibility for this murder.

e. The death of Željko Tabaković and Davor Jezidžić

955. Željko Tabaković and Davor Jezidžić were killed while performing forced labor at a location in Gornji Vakuf.¹¹⁰⁷

¹¹⁰⁶ Count 5(a) of the amended Indictment.

¹¹⁰⁷ Drago Žulj (27 February 2008); Željko Ištuk (23 April 2008); Witness A (5 November 2008).

956. As discussed above, the Panel has concluded that the Prosecution has not proved that Senad Dautović participated in a JCE whose plan and purpose was to coerce Croat prisoners to perform labor and to treat them inhumanely (paragraphs 857 - 864). Accordingly, Senad Dautović's individual responsibility for the killing of these persons has not been proven.

957. It is obvious that these persons were not killed as a part of the JCE whose purpose and plan was to kill Croat extremists, and the Prosecution did not present any evidence to that effect.

f. The killing of Niko Đaja, Mihovil Strujić, Jadranko Gvozden, Frano Jezidžić, Stipica Zelić, Miroslav Dilber, Anto Markulj, Dragan Erkapić, Dragan Miličević, Ivo Miloš, Perica Kovačevića, Zora Galić, Zdravko Juričić, Niko Zlatunić, Nikica Miloš, son of Dragutin, Nikica Miloš, son of Jozo, aka Kardelj, Perica Crnjak and Branko Crnjak

958. The Panel has already provided an explanation concerning the killing of these 18 persons (paragraphs 228 - 320) and established their murder was committed as a part of a JCE which had the purpose of killing Croats who were considered to be extremists.

959. No evidence was adduced at the trial based on which the Panel could establish with certainty whether the final number of the “most extremist persons” was 23 or 26. Regardless, the Panel considers it established beyond a reasonable doubt that the list of “the most extremist persons” existed (paragraphs 266 - 267). Based on the evidence adduced, the Panel concluded that 18 Croat persons regarded extremists under the criteria set by the Wartime Presidency were killed as part of this JCE (paragraphs 228 - 320). The fate of other persons from this list remains unknown to the Panel, given that no evidence was produced in that respect. The Panel kept within the range of the charges from the Indictment, in accordance with its legal obligation.

960. The Panel has made all of the changes to the factual description of the Indictment as a consequence of the facts established at the main trial. The changes are not to the detriment of the Accused, and the changes do not compromise the objective identity of the Indictment. Rather, the Court omitted charges from some of

the Counts that were not proved, in contrast with those that were proved beyond a reasonable doubt and of which the Accused were found guilty.

X. SENTENCING

A. SENTENCING THAT IS NECESSARY AND COMMENSURATE WITH THE GRAVITY OF THE CRIMINAL OFFENSE

961. In terms of the criminal offences charged the Panel considered a sanction which is necessary and consistent with the cited legal aims, including the relevant legal elements. The killings and suffering which took place in Bugojno after the conflict has been the subject of this 3 year trial. The Panel recognizes that for victims no sentence will be commensurate with the gravity of their suffering. The crimes that took place after the surrender have been the subject of this and other court cases. Establishing the facts has been difficult because of the continued silence of the perpetrators. This silence causes ongoing suffering for families of the missing who still search for bodies and answers. This case centers on two major issues. The first concerns the use of vigilante justice by both the civilian and military authorities. The second issue is the treatment of detainees after the conflict. In both areas the legal duty is clear. The Accused in this case are not the primary architects of the crimes. For the most part their crime is silence and a failure to act when they had a clear duty to do so. This was an important factor for the Panel when looking at sentencing. The Panel finds that the sentences levied ensure that both Accused are held accountable for their acts in a manner commensurate with their level of participation in these crimes and their individual level of responsibility.

1. The sentence prescribed shall be necessary and commensurate with the level of the threat against persons and values protected (Article 2 of the CC of BiH)

962. In this regard, the Panel shall also be mindful of the legal elements pertaining to this specific purpose, that is, the sufferings of direct and indirect victims.¹¹⁰⁸ After the conflict the number of missing or killed who were in the care and custody of the civilian and military authorities and for whom the Court found Senad Dautović guilty numbered 18 persons. The majority of these are still missing and the remains have not been located. The cycle of grief can end and healing begin only after remains are

¹¹⁰⁸ Article 48 of the CC of BiH.

found, identified and buried. Finding, identifying and burying remains a critical tangible aspect of the healing process.

963. Witness Anto Kapetanović tells the story of locating his son's remains. His anguish and grief were clearly expressed. The search for his son's body was painful. Asim Balihodžić led him to the burial site so he could at least be sure of his son's death. For those who have been able to find their dead and bury them, they have had a chance to begin the healing process. For the majority this has not been the case. Their suffering has not ended.

964. Victims that survived the ill treatment during detention bear the scars today. For each victim the situation is different. While some have managed to heal and hold little bitterness others are not so fortunate. In addition to physical problems many suffer mental problems as well. It was clear from listening and observing the testimony of the witness detainees that the recollection of the event induces still more suffering. The panel notes that for many their suffering is greater because of a sense of betrayal felt after the surrender. For those who surrendered in good faith, it is clear that they had expected to be treated fairly and promptly exchanged. Given the intensity of the conflict, this may have been naïve on their part, but it nevertheless contributes to the bitter feelings years later. The wound is still fresh for these victims and their families, and prevents healing and reconciliation. The community cannot heal until the individual is healed. The country cannot heal until the communities heal.

965. No sanction can ever adequately address certain types of suffering and the Panel acknowledges the legal limitations of its response. First, the Panel acknowledges a sanction consisting of long term imprisonment is not appropriate here. The interests of justice are satisfied by the sentences levied. Each Accused has been given a sentence considering the existing aggravating and mitigating factors, and the participation and the role of each Accused in the commission of the crimes and therefore the sentences have achieved the overall purpose of criminal sanctions and punishing in terms of Article 39 of the CC of BiH.¹¹⁰⁹

¹¹⁰⁹ Having found that long term imprisonment is applicable, the Panel distinguishes this case from *Kurtović*, X-KRZ-06/299 (Court of BiH), Second Instance Verdict, 25 March 2009. In this instance, the CC of BiH is

2. Criminal sanction shall be commensurate with the extent of suffering, and be sufficient to deter others from similar criminal offenses in the future
(Article 6 and 39 of the CC of BiH)

966. Deterrence is an important consideration with respect to the crimes at issue in this case, especially when considering the effect of vigilante justice on the rule of law and the effect of a failure to act when there is a duty to do so. These failures to act undermine the safety and security of civilians in a time of conflict. For this reason violations of these principles of the rule of law must be penalized to ensure these acts are never repeated. In order to deter others a sentence must be effective to sufficiently convey the illegality of the acts.

3. The criminal sanction shall reflect the community's condemnation of the conduct of the accused (Article 39 of the CC of BiH)

967. In the relevant case, the community comprises those living in Bugnojo as well as in the wider Bosnia and Herzegovina, members of the Diaspora who have left their country as refugees as well as the larger international community. International law and the domestic law of BiH describe the conduct of both Accused as criminal. Both communities have clearly voiced their positions that crimes of this nature are to be condemned notwithstanding the affiliation of the perpetrator or the site of the commission, and that they must not go unpunished. The sanction must be of sufficient weight to ensure this crime is not condoned with impunity.

4. Criminal sanction shall be necessary and commensurate with the educational purposes of the Code, meaning that persons should be made aware of the danger of the crime as well as the justice inherent in punishing criminals
(Article 39 of the CC of BiH)

968. Trials and punishment must demonstrate zero tolerance for the crimes committed at the time of war, and also show that lawful criminal process is an appropriate way to unmask the crimes and end the circle of personal retaliation. The

more lenient than capital punishment that was in force at the time of the perpetration of the criminal offence, which satisfies the principle of the constraints regarding the applicability of the law, that is, the application of

Panel or its judgment cannot order or mandate reconciliation. However, a sanction that fully recognizes the gravity of the offence may contribute to reconciliation by offering a legal and non-violent response, and promote the commitment to pursue justice in lieu of personal or community retaliation. These particular offenses affected everyone in the Bugojno community. As stated before, there is nothing the Panel can do to adequately address the loss suffered by both individuals and the larger community. The Panel can only do what it is designed to do, which is to determine guilt or innocence and apply the law to the result. In this case the court hopes the sentence illustrates that even difficult and complicated crimes can be adjudicated fairly.

B. THE SENTENCE OR CRIMINAL SANCTION MUST BE NECESSARY AND COMMENSURATE WITH THE INDIVIDUAL PERPETRATOR

969. Fairness as a legal requirement shall also be taken into consideration in calculating a sanction,¹¹¹⁰ aside from the specific circumstances of not only the criminal offence, but of its perpetrator as well. The Code foresees the two aims relevant for the person convicted of the criminal offence: (1) to deter the perpetrator from perpetrating criminal offences in the future,¹¹¹¹ and (2) rehabilitation.¹¹¹² Rehabilitation is a purpose not only foreseen under the Criminal Code as one of the duties of the Court, but it is moreover the only purpose of sanctioning exclusively demanded by international human rights law that the Panel is to adhere to in accordance with the Constitution. Article 10(3) of the International Covenant on Civil and Political Rights stipulates that: “The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation”.

970. There are a number of factors relevant to these purposes that affect the sanction an individual convicted person receives.¹¹¹³ The factors include the degree of criminal liability, the conduct of the perpetrator before, during and after the commission of the criminal offence, the motive for perpetrating the offence, and the

the law which is more lenient to the perpetrator.

¹¹¹⁰ Article 39 of the CC of BiH.

¹¹¹¹ Article 6 & 39 of the CC of BiH.

¹¹¹² Article 6 of the CC of BiH.

personality of the perpetrator. These factors may be considered as aggravating or mitigating factors in determining the sentence, as the facts dictate. The Panel considers these factors so that it may determine a sanction that is commensurate with the purpose of sanctioning, that takes into account the nature of the crime itself and its consequences upon the community, and corresponds to the preventive and reformatory demands specific to the particular perpetrator in the case before the Panel.

C. SENAD DAUTOVIĆ

1. The degree of liability

971. The Accused, Senad Dautović, is directly responsible for the crimes he committed as part of a joint criminal enterprise to identify and kill the detainees of Croat ethnicity believed to be extremists following the conflict in Bugojno in the summer of 1993, as well as for his participation in a joint criminal enterprise that involved forcing detainees to donate blood.

972. Additionally he was found responsible for direct acts of commission, as well as for some acts under the doctrine of command responsibility.

973. The Panel has not found any particularly mitigating factors to justify reducing his sentence below the legally prescribed minimum. First, it is clear from the evidence that Senad Dautović was a leader. He commanded the respect of the community and of the men who served beneath him. Most importantly, he commanded the respect of the members of the community who were of Croat ethnicity. Although he was young at the time he bore tremendous responsibility. However leadership is critical in a time of lawlessness. While it is clear that Dautović did everything he could to help avoid the conflict, he nevertheless failed to protect this same community from vigilante retribution. It is not clear if he could have stopped the killings, but by failing to voice his objections, by remaining silent during the planning meeting, he allowed the situation to develop unchecked by any obstacle. With regard to the other offenses, he clearly had the authority to seek

¹¹¹³ Article 48 of the CC of BiH.

blood donations from non-detainees, to supervise his men, punish them as necessary and relieve overcrowding. However in these areas he also failed. The Panel considered these circumstances as aggravating factors.

2. The conduct and personal situation of the Accused

974. The conduct and the personal situation of the Accused Senad Dautović before, during and after the commission of the crime contains both aggravating and mitigating facts that are relevant in view of prevention and rehabilitation.

(a) Prior to the commission of the criminal offense

975. The Accused did his military service in Negotin in 1981. He received his university education in National Defense. He has no prior convictions. The fact that he has no prior convictions is considered to be a mitigating factor.

(b) The circumstances of the criminal offense

976. During and immediately after the conflict Dautović occupied positions of authority and responsibility. He was the Chief of SJB Bugojno and Assistant Commander for Security in the OG "West". The Panel finds this to be an aggravating factor.

(c) The circumstances after the relevant time

977. After the end of the war, Senad Dautović returned to his position as Chief of the Bugojno Public Security station. As a law enforcement officer he had the duty to tell the truth. Although he was interviewed numerous times by investigators, including ICTY investigators, in each of these interviews he covered up his role in the war crimes to avoid charges. In view of his freedom from self-incrimination, the Panel did not consider these circumstances as either mitigating or aggravating.

978. He is married and the father of two children.

(d) Conduct during the proceedings

979. In the course of the proceedings, the conduct of the Accused was appropriate. He was respectful of the Court and his behavior was professional. His conduct during the case was appropriate and met the Panel's expectations, and is therefore neither an aggravating nor mitigating factor.

3. Motive

980. The existence of a motive is neither an essential element of the criminal offence in the relevant case nor is it linked with the intent. The Accused had the necessary intent to commit the crimes prescribed under the Code and established in the reasoning to the verdict. Therefore, the Panel will make no findings on this issue and motive is neither an aggravating nor mitigating factor.

4. The personality of the Accused

981. The Panel has no evidence on the personality of the Accused other than what he had demonstrated by the commission of the criminal offence and his evident conduct in the courtroom, which is why these circumstances were not considered as either mitigating or aggravating.

5. Reduction of punishment according to the Code

982. Article 49 of the CC of BiH states the following in terms of the reduction of punishment:

The court may set the punishment below the limit prescribed by the law, or impose a milder type of punishment:

- a. When law provides the possibility of reducing the punishment; and
- b. When the court determines the existence of highly extenuating circumstances, which indicate that the purpose of punishment can be attained by a lesser punishment.

983. The Panel inferred that the conditions set by this article were not met, and thus that the punishment could not be reduced.

6. Deterrence and social rehabilitation

984. The length of a sentence and the time spent in jail as punishment for the crime are legitimate deterrents in most cases. They provide the offender with an opportunity to consider the effects of his actions on victims, to reflect on his past mistakes and to make amends for his criminal actions.

D. CONCLUSION

985. Given the established factual and legal findings, the Panel finds that the sentence of imprisonment for a term of 13 years is commensurate with the gravity of the offence given the existing aggravating and mitigating factors, and the participation and the role of the Accused in the commission of the crimes, whereby the sentence achieves the overall purpose of criminal sanctions and punishing in terms of Article 39 of the CC of BiH.

E. NISVET GASAL

1. The degree of liability

986. The Accused, Nisvet Gasal, is responsible for the certain war crimes against civilians which took place during his tenure as Warden at the *Iskra* Stadium camp. However, as the findings above indicate, Gasal himself exercised only limited authority. He was not in a position to significantly impact most decisions. It is clear he did not initiate any criminal behavior himself. He did, however, fail to act when he had the duty to object to known criminal behavior, and fail to take reasonable measures to punish his subordinates for behavior that was prohibited where he did possess effective control over them. These circumstances are neither aggravating mitigating factor for the Accused.

2. The conduct and personal situation of the Accused

987. The conduct and the personal situation of the Accused Nisvet Gasal before, during and after the commission of the crime contain both aggravating and mitigating facts, and are relevant in view of prevention and rehabilitation.

(a) Prior to the commission of the criminal offense

988. The Accused is a criminal investigator. He completed a two year post-secondary school program and is married. He has no prior convictions.

(b) The circumstances of the criminal offense

989. During the time of the offense Gasal had been a police officer. He was then subordinated to the military and assigned to the Camp as warden. He came into a bad situation not of his own making.

990. The Panel has found mitigating factors sufficient to reduce a sentence below the legally prescribed minimum. First, it is clear from the evidence that Nisvet Gasal himself did not have sufficient resources or authority to render significant changes at the camp. What is clear is the situation improved under his tenure. Almost every witness confirmed this. The significant abuse the camp detainees experienced happened primarily under the previous warden. He inherited a camp where there were significant problems. Gasal, however, managed to drastically reduce the number of beatings, instituted programs to allow relatives to supplement the food the detainees received, did not interfere with the access granted to Nun Pavka and other religious visitors and cooperated with ICRC officials to the extent requested of him. In response to concerns raised by the ICRC, he had Kukavica build sleeping platforms in an attempt to relieve the overcrowding and gain some needed sleeping space as well. He and Kukavica devised a plan to restore electricity to the stadium. He continued the practice of allowing 20 detainees a day to visit the medical clinic. For the most part detainees took advantage of this and received medical treatment. Doctors did camp inspections and as a result lice was controlled. Detainees were allowed to go into the town to their homes or the home of a friend to take a bath. The Panel recognized that the detainees were held during a time when a siege was in place and the general population had restricted access to supplies and necessities. When the situation eased and the flow of humanitarian aid increased, the detainees benefited accordingly.

(c) The circumstances after the relevant time

991. After the end of the war, Nisvet Gasal returned to his position as a police officer at the Bugojno Public Security station. He is a family man.

(d) Conduct during the proceedings

992. In the course of the proceedings, the conduct of the Accused was appropriate. He was respectful of the Court and his behavior was professional. His conduct during the case was appropriate and met the Panel's expectations, and is therefore neither an aggravating nor mitigating factor.

3. Motive

993. The existence of a motive does not constitute an essential element of the criminal offence in the relevant case nor is it linked with the intent. The Accused had the necessary intent to commit the crimes prescribed under the Code and established in the reasoning to the verdict. Therefore, the Panel will make no findings on this issue and motive is neither an aggravating nor mitigating factor.

4. The personality of the Accused

994. The Panel has no evidence on the personality of the Accused other than what he had demonstrated by the commission of the criminal offence, and his evident conduct in the courtroom, which were both discussed in previous paragraphs.

5. Reduction of punishment according to the Code

995. Article 49 of the CC of BiH cites the following in terms of the reduction of punishment:

The court may set the punishment below the limit prescribed by the law, or impose a milder type of punishment:

- a. When law provides the possibility of reducing the punishment; and
- b. When the court determines the existence of highly extenuating circumstances, which indicate that the purpose of punishment can be attained by a lesser punishment.

996. Based on this Article, the Panel has determined that the necessary conditions have been met, and the punishment has been reduced accordingly.

6. Deterrence and social rehabilitation

997. The length of a sentence and the time spent in jail as punishment for the crime are legitimate deterrents in most cases. They provide the offender with an opportunity to consider the effects of his actions on victims, to reflect on his past mistakes and to make amends for his criminal actions.

F. CONCLUSION

998. Given the established factual and legal findings, the Panel finds the Accused guilty of War Crimes against Civilians and sentences him to 6 years. The Court finds that the type of criminal sanction is commensurate with the gravity of the offence given the existing aggravating and mitigating factors, and the participation and the role of the Accused in the commission of the crimes, whereby the sentence achieves the overall purpose of criminal sanctions and punishing in terms of Article 39 of the CC of BiH.

999. Pursuant to Article 56(1) of the CC of BiH, the time that the Accused Senad Dautović spent in custody in the period from 16 April 2007 until 20 February 2009 shall be credited toward his sentence.

1000. Pursuant to Article 56(1) of the CC of BiH, the time that the Accused Nisvet Gasal spent in custody in the period from 21 March 2007 until 13 May 2008, from 31 May 2008 until 4 July 2008 and from 27 August 2008 until 19 February 2009 shall be credited toward his sentence.

XI. DECISION ON COSTS AND PROPERTY CLAIMS

1001. Pursuant to Article 188(2) and (4) of the CPC of BiH, after review of their financial data, the Panel relieved the Accused of the duty to pay for the costs of the criminal proceedings. The costs shall be covered from the Court's budget. Additionally, in the acquitting part of the verdict, pursuant to Article 189(1) of the CPC of BiH, costs of the criminal proceedings shall be covered from the Court's budget.

1002. Pursuant to Article 198(2) of the CPC of BiH the Court refers any aggrieved parties to pursue their property claims in the civil proceedings, given that the establishment of facts relative to the amount of the property claims would prolong these proceedings. The Panel balanced the interest of the aggrieved parties with those of the Accused.

Record-taker

Igor Dubak

PANEL PRESIDENT

JUDGE

Davorin Jukić

LEGAL REMEDY: This Verdict may be appealed with the Appellate Panel of the Court of BiH within 15 days as of the receipt of the written copy thereof.

XII. ANNEX

A. PROCEDURAL DECISIONS

1. Decision refusing the 16 December 2009 Defense Motion to accept facts that were established in the ICTY judgments

1. On 16 December 2009, the Panel rendered the Decision refusing the 14 December 2007 Motion by the Defense for the Accused Nisvet Gasal, Musajb Kukavica and Senad Dautović to accept facts that were established in the ICTY judgments.

2. Pursuant to Article 4 of the Law on the Transfer of Cases, Defense Counsel for the Accused Nisvet Gasal, Musajb Kukavica and Senad Dautović filed on 14 December 2007 the Motion to accept facts that were established before the International Criminal Tribunal for the former Yugoslavia (ICTY) concerning the character of armed conflict during the time period material to the Indictment. In their motions the Defense Counsel referred to facts from the ICTY trial and appeal judgments in the following cases: *Prosecutor v. Kordić and Čerkez* (number IT-95-14/2-T, Trial Judgment of 26 February 2001 and IT-95-14/2-A Appeals Judgment of 17 December 2004) and *Prosecutor v. Blaškić* (number IT-95-14-T, Trial Judgment of 3 March 2000 and IT-95-14-A, Appeals Judgment of 29 July 2004), as well as the Trial Judgment in the *Prosecutor v. Kupreškić et al.* case (number IT-95-16-T, Trial Judgment of 14 January 2000).

3. On 23 June 2008, the Prosecution filed their Response to the written Defense motions, in which they move the Court to refuse these motions. On 8 December 2009, the Court informed the parties in writing of its intention to schedule a hearing at which they would have an opportunity to present their arguments with respect to the Defense motion. Defense Counsel for the Accused stated that they maintain averments made in their written motions and did not request a separate hearing on this matter. On 15 December 2009, the Prosecution filed the Response in writing. Similarly, they did not request a separate hearing on this matter either.

4. Having reviewed the arguments and relevant law in relation to the acceptance of established facts, the Court decided to refuse the Defense motions.

Discussion

5. The Law on the Transfer of Cases applies to the case at hand because although it is not a case transferred from the ICTY to the Prosecutor's Office of BiH, the Law on the Transfer of Cases allows for the admissibility of evidence collected by the ICTY in proceedings before the courts in BiH.¹ Article 4 of the Law on the Transfer of Cases² stipulates that at the request of a party or *proprio motu*, the Court, after hearing the parties, may decide to accept as proven those facts that are established by legally binding decisions in any other proceedings by the ICTY or to accept documentary evidence from proceedings of the ICTY relating to matters at issue in the current proceedings.

6. The formal requirement of Article 4 to hear the parties prior to rendering a decision concerning established facts was met by offering the parties on 8 December 2009 to state their position at another hearing, in response to which the Defense for the Accused stated they would rely on their written submissions. The Prosecution responded by submitting a written response dated 15 December 2009. They also did not request a separate hearing on the matter.

7. The procedure of acceptance of established facts is primarily intended to ensure the expediency of the proceedings. By acknowledging these established facts, the Court achieves judicial economy in the sense that it condenses the relevant proceedings to what is essential for the case of each party and eliminates the necessity to prove again the fact that has been previously adjudicated in past proceedings. The procedural legal impact of taking notice of an established fact is that burden of proof to disqualify the fact is shifted in this instance from the Defense to the Prosecution. If during a trial, an opposing party wants to dispute an established fact of which the Court has taken notice, the opposing

¹ Article 1(1) of the Law on the Transfer of Cases states that "[t]he provisions set forth in this Law shall regulate the transfer of cases by the International Criminal Tribunal for the former Yugoslavia (hereinafter: ICTY) to the Prosecutor's Office of BiH and the admissibility of evidence collected by the ICTY in proceedings before the courts in BiH".

² Article 4 of the Law on the Transfer of Cases states that "[a]t the request of a party or *proprio motu*, the courts, after hearing the parties, may decide to accept as proven those facts that are established by legally binding decisions in any other proceedings by the ICTY or to accept documentary evidence from proceedings of the ICTY relating to matters at issue in the current proceedings".

party has a right (as a matter of safeguarding the fairness of the trial) to submit evidence that calls into question the veracity of the established facts.³

8. The Court emphasizes that its first concern is to ensure that the Accused is offered a speedy and fair trial in accordance with Article 13 of the CPC of BiH and Article 6(1) of the European Convention on Human Rights (“ECHR”). Accordingly, as long as this principle is upheld, the Court has a duty to avoid waste of unnecessary time and resources.

9. Article 4 leaves to the discretion of the Panel the decision as to whether to accept the facts proposed. Neither the Law on the Transfer of Cases nor the CPC of BiH provide for the criteria upon which the Panel might rely in exercising its discretion. In the decision in the Miloš Stupar et al. case (X-KR-05/24) dated 3 October 2006, the decision in *Tanasković* (X-KR-06/165) dated 26 June 2007, and the decision in the *Lelek* case (X-KR-06/202) dated 3 July 2007, other panels of the Court of BiH set out the criteria they considered appropriate to apply in the exercise of their discretion under Article 4. These criteria take into account the rights of the Accused under the BiH law, incorporating the fundamental rights protected by the ECHR. At the same time, the Panel was mindful of the ICTY jurisprudence developed in interpreting Rule 94 of the ICTY Rules of Procedure and Evidence.⁴ The Panel notes that Rule 94 and Article 4 of the Law on the Transfer of Cases are not identical and that the Panel is not in any way bound by the decisions of the ICTY. However, it is self evident that some of the issues confronting the Tribunal and panels of the Court of BiH are similar when considering established facts and that therefore the considerations will likewise be similar. Upon review of these criteria in light of the arguments in this case, the Panel holds that these criteria fairly protect the interests of the moving parties, the rights of the Accused, the purpose of the Law on the Transfer of Cases and the integrity of the trial process.

10. Accordingly, in deciding as set out in the operative part, the Panel took into account the following criteria:

1. A fact must truly be a “fact” that is:

³ Article 6(2) of the CPC of BiH and Article 6(3)(d) of the ECHR.

⁴ Rule 94(B) states that „[a]t the request of a party or *proprio motu*, a Trial Chamber, after hearing the parties, may decide to take judicial notice of adjudicated facts or documentary evidence from other proceedings of the Tribunal relating to the matters in the current proceedings”.

sufficiently distinct, concrete and identifiable;

not a conclusion, opinion or verbal testimony;

not a characterization of legal nature.

2. A fact must contain essential findings of the ICTY and must not be significantly changed.

3. A fact must not attest, directly or indirectly, to the criminal responsibility of the Accused.

4. Nevertheless, a fact that has gained such a level of acceptance as true that it is common knowledge and not subject to reasonable contradiction can be accepted as adjudicated fact even if it relates to an element of criminal responsibility.

5. A fact must be 'established by a legally binding decision' of the ICTY, which means that the fact was either affirmed or established on appeal or not contested on appeal, and that no further opportunity to appeal is possible.

6. A fact must be established in the proceedings before the ICTY in which the Accused against whom the fact has been established and the accused before the Court of BiH have the same interests with reference to contesting a certain fact. Accordingly, the facts stated in the documents which are a subject of a plea agreement or voluntary admission in the proceedings before the ICTY shall not be accepted, given that the interests of the accused in such cases are different, often contrary to the interests of those accused who utilized their right to a trial.

7. A fact must be established in the proceedings before the ICTY, in which the accused against whom the fact has been established has legal representation and the right and opportunity to defend himself. It is therefore clear that the acceptance of the fact deriving from the proceedings in which the Accused has not tested it by his evidentiary instruments is unacceptable for this Panel. Even more so because the accuracy of that fact is questionable, since the Accused did not have the opportunity (or had insufficient opportunity) to respond to it and try to contest it.

11. In using the criteria mentioned above, the Court assessed the proposed facts from the motions of the Defense for Accused Nisvet Gasal, Musajb Kukavica and Senad Dautović that purport to establish international character of the armed conflict in Bosnia and Herzegovina, specifically in the territory of Bugojno, which is the territory indicated in the Indictment, and a wider area during the relevant time period. The Indictment for Nisvet Gasal and Musajb Kukavica alleges that the Accused violated rules of international humanitarian law (Article 3(1)(a) and (c) of the Fourth Geneva convention relative to the Protection of Civilian Persons in Time of War, 12 August 1949) during the war in Bosnia and Herzegovina, and at the time of armed conflict between the HVO /Croat Defense Council/ and the Army of the Republic of Bosnia and Herzegovina in Bugojno in the period

between August 1993 and 19 March 1994.

12. The Indictment for Enes Handžić and Senad Dautović alleges that the accused violated rules of international humanitarian law (Article 3(1)(a) and (c) of the Third Geneva Convention relative to the Treatment of Prisoners of War and Article 3(1)(a) and (c) of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, 12 August 1949) during the war in Bosnia and Herzegovina, and at the time of armed conflict between the HVO /Croat Defense Council/ and the Army of the Republic of Bosnia and Herzegovina in Bugojno in the period between 18 July 1993 and 19 March 1994.

13. Common Article 3 contains “the fundamental humanitarian principles which underlie international humanitarian law as a whole.”⁵ Common Article 3 is also widely recognized as being a foundation of customary international humanitarian law.⁶ These fundamental rules are a minimum which applies to all conflicts regardless of whether they are of international or non-international character.⁷ Therefore, admitting facts that establish the international character of the armed conflict amounts to the admission of a fact which, given the Indictment, is not necessary for this Court to determine under Common Article 3 and is therefore irrelevant. Recalling the test that it is bound to, this Court must deny judicial notice if the facts do not meet the established criteria.

14. Defense submits that Articles 2 and 4 of the Third Geneva Convention relative to the Treatment of Prisoners of War, 12 August 1949 apply. In the view of the Panel, the facts raised contain the legal conclusion of the existence of an international armed conflict. This may be a legal element of the law which the Defense believes applies in the instant case. The Panel does not accept facts which may be relevant, but contain characterizations of an essentially legal nature. Additionally, according to the established criteria the Panel does not accept submissions of paragraphs from the ICTY judgments which are conclusions, opinions or verbal testimony.

15. The Panel finds the Defense averment that the Prosecution is using Common Article 3 in order to persuade the Panel that the persons in question were civilians and that

⁵ *Prosecutor v. Delalić*, IT-96-21-A, Appeals Judgment, 20 February 2001, para. 143.

⁶ *Nicaragua v. United States of America*, Case Concerning the Military and Paramilitary Activities In and Against Nicaragua, International Court of Justice, Judgment of 27 June 1986, para. 218; *Prosecutor v. Tadić*, IT-94-1, Decision by the Appeals Chamber on the Defense Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, para. 98 & 129.

it was an organized attack on civilians to be without merit. The categories of persons who are afforded protection of Common Article 3 is not limited to victims who are civilians but also to those who were “taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause.”⁸ Article 3 has been said to include detained persons who, prior to detention, were members of the armed forces or were engaged in armed hostilities.⁹

16. The question that remains is what the Defense gains if any other provision of the Geneva Conventions is applied. The Defense has the burden to show why it is necessary to look to other articles to define liability. Without this showing, the issue of whether it was an international armed conflict or not is irrelevant.

2. Decision of 25 February 2011 to admit the established facts ex officio

1. On 25 February 2011, the Panel rendered the Decision to admit ex officio the following established facts from the ICTY Trial Judgment in the *Prosecutor v. Hadžihasanović and Kubura* case, IT-01-47-T (15 March 2006)¹ in accordance with Article 4 of the Law on the Transfer of Cases from the ICTY in Proceedings before the Courts in BiH (Law on the Transfer of Cases), as read with Article 261(1) and Article 15 of the Criminal Procedure Code of Bosnia and Herzegovina (CPC of BiH), “as proven” as follows:

312. On 23 June 1992, a decision of the Republic of Bosnia and Herzegovina (“RBiH”) Presidency created the RBiH Army (“ARBiH”) to protect the RBiH from the fighting that had broken out on its territory. Between 8 April and 23 June 1992, the RBiH Presidency organized the Defense of the territory using already existing Territorial Defense (“TO”) units.

314. A state of war and mobilisation were declared in the RBiH on 20 June 1993.² As of 23 June 1992, the RBiH TO was renamed the “RBiH Army” and the TO Main Staff became the Main Staff of the RBiH Armed Forces. In

⁷ *Prosecutor v. Delalić*, IT-96-21-A, Appeals Judgment, 20 February 2001, para. 143.

⁸ Common Article 3 of the four Geneva Conventions of 12 August 1949.

⁹ See *Prosecutor v. Naletilić and Martinović*, IT-98-34-T, Trial Judgment, 31 March 2003, para. 229; *Prosecutor v. Tadić*, IT-94-1-T, Trial Judgment, 7 May 1997, paras. 615 - 616; *Prosecutor v. Blaškić*, IT-95-14-T, Trial Judgment, 3 March 2000, para. 177; *Prosecutor v. Akayesu*, ICTR-96-4-A, Appeal Judgment, 1 June 2001, para. 442.

¹ Footnotes to paragraphs of Judgment omitted.

² The Trial Panel notes that this should read 1992 and not 1993.

Central Bosnia, certain TO units at the district, and particularly municipal, level would be dissolved much later, but until they disbanded they would remain a support force following ARBiH orders.

319. By presidential decision of 18 August 1992, the territory of the Republic of Bosnia and Herzegovina was to be divided into five zones of military responsibility, each covered by an army corps answering to the ARBiH Supreme Command Main Staff.

321. On 29 September 1992, pursuant to the Presidency Decision of 18 August 1992, the Supreme Command Main Staff ordered that the district TO staffs ("OkŠO") be re-subordinated to the corps, which meant that the OkŠO of Zenica and Banja Luka would be subordinated to the 3rd Corps. The municipal Defense staffs ("OpŠO") were to be subordinated to the ARBiH units in their respective zone of responsibility. Because of combat operations in part of the territory of Bosnia and Herzegovina, the 3rd Corps zone of responsibility changed slightly and the 3rd Corps set up permanent headquarters in Zenica.

322. On 9 November 1992, the Chief of the Supreme Command Main Staff, Sefer Halilović, ordered the creation of specific types of units within the 3rd Corps in order to counter the fighting that raged in certain municipalities and also to allow various TO headquarters and units to merge. He appointed Enver Hadžihanović head of the 3rd Corps around mid-November 1992. The following municipalities were to be included in the 3rd Corps zone of responsibility: Banja Luka, Bosanska Dubica, Bosanska Gradiska, Bugojno, Busovača, Čelinac, Donji Vakuf, Gornji Vakuf, Jajce, Kakanj, Kotor Varoš, Kupreš, Laktaši, Mrkonjić Grad, Novi Travnik, Prnjavor, Skender Vakuf, Srbac, Šipovo, Travnik, Vitez, Zavidovići, Zenica and Žepče. Owing to combat operations, this zone of responsibility was slightly changed and reduced, although the municipality of Vareš was subsequently added to it.

323. The 3rd Corps Command Staff, based in Zenica, consisted of several organs. The 3rd Corps Command Staff had the same structure as the Main Staff.

325. The Operations Centre collected all information about the 3rd Corps zone of responsibility originating in civilian structures, subordinated units, the superior command and the MUP, and transmitted important information to the Corps Commander. The Centre was the sole repository of information and operated 24 hours a day. The 3rd Corps Command sent a daily report compiled by the centre to the Main Staff Command.

327. The 3rd Corps Military Security Service was headed by Ramiz Dugalić. This Service had ultimate responsibility for counter-intelligence activities, the work of the military police, and the work of securing headquarters and other vital facilities. The Military Security Service answered to a double chain of command: one from the military command headed by the Chief of the Main Staff and one from the military security headed by the Minister of Defense. Within the context of this double chain of command, assistant commanders for security were in charge of transmitting information to their units and to the 3rd Corps chiefs of security regarding the situation in their zone of responsibility, along with any intelligence having to do with military security.

330. In early April 1992, after leaving the JNA, the Accused Hadžihasanović joined the RBiH TO and was appointed Chief of Staff of the ARBiH 1st Corps on 1 September 1992. He was first mandated by Sefer Halilović to go to Zenica to organise troops to lift the blockade of Sarajevo. His next mission was to consolidate and organize the units in Central Bosnia, based in Zenica, in order to counter the Serbs' military aggression in Bosnia and Herzegovina. Consequently, Sefer Halilović appointed him 3rd Corps Commander in mid-November 1992, a position he retained until 1 November 1993 when he was succeeded by Mehmed Alagić.

333. ...The military security service to which the military police units and the Military Police Battalion were attached, had a double chain of command. Following the vertical chain of command, the military security service of a corps obeyed the orders and instructions of the Supreme Command Main Staff Chief of Security. This same chain meant that the Security Service of a corps had the command of the security units subordinated to it. Following the horizontal chain of command, the 3rd Corps Security Service obeyed the orders of the 3rd Corps Commander.

334. In late November 1992, the 3rd Corps wanted to set up a joint military police with the HVO. This, however, was never implemented. The 3rd Corps Military Police Battalion was created in December 1992 and initially consisted of four companies of 75-80 men. In the second half of 1993, a new company was created to fight terrorist activities. In addition to the Military Police Battalion, a military police platoon or company comprising some thirty men, was attached to each of the brigades mentioned in the Indictment.

335. Sometimes members of the Military Police Battalion or other military police unit took part in combat when the commander of their brigade or operations group felt it would be useful... the Military Police Battalion and the different military police units were tasked, inter alia, with investigating offences committed by members of the ARBiH and reporting them to the district military prosecutors...

336. The civilian police were not subordinated to the ARBiH and answered to the MUP. Nevertheless, on several occasions, civilian police units were subordinated to the military police in order to take part in specific missions. Relations between the "two police" revolved primarily around cooperation in conducting investigations.

339. With the creation of the ARBiH, the TO was initially maintained with the subordination of its different units to the ARBiH; TO units provided logistics support and/or military support. Then the ARBiH began to progressively dismantle these units in the 3rd Corps zone of responsibility by incorporating them into 3rd Corps units. District TO staffs ("OkŠO") were dissolved first, while municipal Defense staffs ("OpŠO") remained operational until the autumn of 1993. On 16 April 1993, the Accused Hadžihasanović gave the order to dissolve the Zenica OkŠO and subordinate all the 3rd Corps zone's OpŠO to the 3rd Corps Command. Most of these were placed under the command of operations groups. In September 1993, the Main Staff mentioned preparations to dissolve the 3rd Corps OpŠO and transfer their powers to the corps and brigade commands...

340. In February 1993, the Accused Hadžihasanović proposed the creation of operations groups ("OG") to ensure a more rational functioning of the chain of

command between the area units and the 3rd Corps Command. Operations groups were subsequently created on 8 March 1993. The OG Bosanska Krajina, headquartered in Travnik, was in charge of the 7th Brigade and the 17th Brigade, among others. In June 1993, the 306th Brigade and the 325th Brigade were also placed under its command. When OG Bosanska Krajina was created on 8 March 1993, Mehmed Alagić was appointed its commander, a position he held until 1 November 1993 when he was appointed 3rd Corps Commander, replacing the Accused Hadžihasanović.

341. The OG Lašva had its headquarters in Kakanj and the 309th, 325th and 333rd Brigades were subordinated to it. The OG Bosna had its headquarters in Žepče or Zavidovići and was in command of the 318th and 319th Brigades. The OG Zapad had its headquarters in Bugojno and the commands of the 306th, 307th, 308th, 312th and 317th Brigades were subordinated to it. Selmo Čikotić became the Commander of OG Zapad on 8 March 1993. As of 17 March 1993, OG Visoko, which was originally subordinated to the 1st Corps, was re-subordinated to the 3rd Corps. In April 1993, OG Visoko was renamed OG Istok. At the end of August 1993, OG Istok was resubordinated to the 6th Corps.

393. This brigade [307th Brigade] was created in late 1992. It was based in Bugojno and consisted of at least four battalions and a military police unit...the 307th Brigade also had anti-sabotage units.

400.[B]ecause the VRS ("Army of Republika Srpska") had occupied its territory, there was a massive influx of refugees to the 3rd Corps zone of responsibility. Thirty thousand refugees arrived in the municipality of Travnik, primarily from Banja Luka, Prijedor and Kotor Varoš. The town of Zenica took in the largest number of refugees, up to 50,000 during the period in question. In the middle of 1992, thousands of Muslim refugees who had been expelled from Donji Vakuf, Prozor and other regions, arrived in Bugojno.

401. In addition, owing to combat in Central Bosnia and roads that were closed, it was difficult to get food supplies. It should be noted that while Muslim refugees fled to the municipalities of Travnik and Zenica in order to escape the fighting, the Croatian population deserted certain villages of the Bila and Lašva Valleys. Some refugees had problems with the local population and moved into the Croats' abandoned houses. Although feeding and lodging refugees was the responsibility of the civilian authorities, they were unable to fulfill this role properly because of the influx of such a large number. Furthermore, many battalions were made up of refugees.

857.The Presidency of the Republic of Bosnia and Herzegovina insisted that international conventions based on international humanitarian law be respected and adopted texts and issued orders to this effect. The Supreme Command, in charge of carrying them out, did likewise.

861. The activities of the military police were subject to the Rules of Service for the ARBiH Military Police enacted on 8 September 1992, and by directives from the 3rd Corps Command and the Law on Criminal Procedure.

862. Pursuant to the Rules of Service for the ARBiH Military Police, the main mission of the military police was to ensure the protection of vital elements in the system of command, particularly against all terrorist or saboteur actions. The military police's task was to prevent and if need be to uncover all criminal activity in which members of the armed forces or other citizens took part, but only when

the crime involved military property or fell within the jurisdiction of the military courts.

863. These tasks were carried out by the different services that composed the military police. The security service was in charge of protecting the vital command components by undertaking measures to protect vital facilities, in particular headquarters, military prisons and their access routes. In this context, the Military Police Battalion had the task of securing the prisoner of war reception centre at the KP Dom (Penal and Correctional Facility) in Zenica.

865. The patrol service, *inter alia*, protected persons and military facilities, and oversaw the security of military traffic. In addition, it found and detained perpetrators of crimes under the jurisdiction of the military courts. The service also escorted arrested persons, and in wartime, prisoners of war.

866. The service for prisoner escort included carrying out the measures and procedures for guarding detained persons, and seizing documents and property, from the moment of reception until they were handed over to the competent organs. In the case at hand, should the 3rd Corps Chief of Security consider that there were many prisoners of war or they were "of special importance", military police units could be used to escort them to a prisoner of war reception centre. Thus, in January 1993, a military police company was sent to the Lašva region to escort prisoners of war to the KP Dom in Zenica.

870. In the performance of their duties, members of the military police had the power to take a number of measures including in particular checking identities, compiling and filing reports, and arresting and detaining people. In theory, the military police units had these same powers and used them against citizens who were not members of the armed forces or foreign nationals without diplomatic status when their activity was directed against the armed forces.

874. The military police units were required to report their activities to the military security service to which they were attached. Thus, military security services received information concerning the activities of the military police units. They directed the activities of the military police and had the task of informing the brigade commander about these activities so as to receive further orders or instructions. Nevertheless, in limited cases such as counter-intelligence, the security services did not have to report to either the 3rd Corps Command or the brigade or operations group command. The commanders of the brigades, operations groups or 3rd Corps Command were the only ones with authority to engage military police units in combat activities.

877. Every brigade had a military police platoon or company, which enabled the military police to undertake activities within their area of jurisdiction wherever the ARBiH was deployed. Every mountain brigade had a military police platoon and every motorized brigade had a military police company. Military police platoons had from 27 to 31 men, while military police companies had up to 100 or 120 members. These platoons or companies were commanded by a military police commander whose superior was the brigade's assistant commander for security. The brigade commander was in charge of engaging military units in combat.

882. The recruitment of personnel in the military security service was subject to general and specific conditions. The criteria had to do with the applicants' abilities, personal qualities and membership in the former JNA (Yugoslav People's Army). Nevertheless, these criteria were difficult to respect in the

recruitment process since the absence of a unified database covering the territory of Bosnia and Herzegovina affected the possibility of verifying the level of the applicants' skills and training. In addition, even when this information was available, it was difficult to find enough competent men to turn them into military police. Finally, the recruited men's lack of skills had a harmful effect on discipline in the military police units that took the form of an increase in criminality within their own ranks.

883. Training the military police was the responsibility of the military security section within the army corps and the assistant commanders for security within each brigade. Training organized for the military police included instruction in the missions to be carried out, actions to take and fitness training. This training also included instruction on respect for the Geneva Conventions and obligations stemming from the laws of war. The 3rd Corps Command drew the units' attention to the need to respect the principle of legality and the norms of military police conduct. In the field of forensic activities, cooperation was in place with the Security Centre in Zenica whereby members of the military police were sent to the Criminology Department to be trained in this area.

887. No hierarchy existed between the military and civilian police. The relationship between them was that of partners ensuring respect for the law and implementation of the law. It could happen, however, that the civilian police were re-subordinated to the military police for specific missions when they did not have sufficient manpower. Thus, following an order from 3rd Corps Command dated 18 June 1993, MUP units were re-subordinated to the 306th Brigade to carry out joint patrols and set up check-points with military police units subordinated to the 306th Brigade in order to prevent plundering and arson.

888. Cooperation between the civilian and military police generally involved investigations and crime prevention. Thus, in the investigation following a crime, the military police cooperated directly with the MUP when a civilian committed a crime that was within the jurisdiction of district military courts or when a civilian was involved in criminal activity along with a member of the military. The military police could act independently, however, when a member of the ARBiH committed a crime falling within the jurisdiction of the district military courts.

889. In addition, joint actions were undertaken by the two police forces in order to prevent crimes and violations of the law and public order. This included joint patrols and setting up joint checkpoints. To give an example, owing to the large number of men wearing uniforms but not belonging to military formations, 3rd Corps Command ordered that patrols composed of members of the MUP and military police were to check identities in the town of Zenica. Likewise, the military police lacked manpower to secure places that were primarily uninhabited and protect the property belonging to civilians. With the cooperation of the civilian police, military police units set up check-points and went on patrols. For example, during August 1993, the 3rd Corps Military Police Battalion in cooperation with the MUP checked 1,500 vehicles at check-points and during joint patrols.

890. There was continuous cooperation between the military police and the civilian police. Owing to their respective authority and their materials, the effectiveness of their actions required cooperation in different areas. On the one hand, the military police lacked forensic equipment to conduct on-site investigations when crimes had been committed. But the Security Service Centre in Zenica had the necessary materials to take fingerprints at crime scenes, and make ballistics analyses and paraffin tests. Thus, owing to a shortage of

equipment to carry out certain operations during investigations, the OG Bosanska Krajina Military Police Company had to cooperate with the public security stations in Travnik. On the other hand, authorized military police had the right to use data and information from MUP criminal reports when carrying out their own criminal investigations. Finally, owing to the respective areas of competence of the military police and the civilian police regarding the perpetrators of the crimes, cooperation between them was necessary to verify the identification of those who had broken the law and take measures against them.

892. The commission of an offence could be brought to the attention of military police units by the victims, by witnesses or by observations made by the police. When an offence was committed that fell within the jurisdiction of the district military courts, the authorized military police had to gather the necessary information on the offence and perpetrator and make a report which was to be sent to the district military prosecutors with information on the evidence found and the measures and actions undertaken. The criminal report had to include information on the perpetrator, the place and date of the offence, a description of the facts, the evidence and the identity of the witnesses or persons who could provide information on the offence or perpetrator.

893. When a military police unit was informed that an offence had been committed, it also sent a report to the commander of the brigade to which it was attached. Military police units carried out investigations, particularly when members of the ARBiH abandoned their positions, sold weapons or committed robberies. Following this, the brigade commander took disciplinary measures against the perpetrators of those offences.

894. The territorial jurisdiction of the military police units was determined by the place where the crime was committed. When an offence was committed in a brigade's zone of responsibility, the brigade's military police secured the crime scene.

895. The military police had trouble properly carrying out their investigations and gathering information on the perpetrators. Problems related to poor communications or the fact that the military police could not go to a crime scene promptly because of a shortage of fuel or men, had repercussions on how fast the military police intervened to collect information or evidence about an offence....[o]wing to the influx of refugees, it was difficult for the military police to establish the identity or place of residence of some suspects or witnesses.³

897. The military police units filed numerous criminal complaints with the military prosecutors for offences committed by members of the ARBiH, HVO or civilians. The 3rd Corps Military Police Battalion was responsible for filing most of the complaints with the district military prosecutors. From 14 September 1992 to 1 March 1994, the 3rd Corps Military Police Battalion filed 377 criminal reports involving 804 identified and 20 unidentified persons. The 17th Brigade filed some 30 complaints for crimes committed by its members.

899. It did happen, however, that following investigations by military police units, no complaint was filed with the district military prosecutors but that disciplinary measures were taken instead by the commander of the brigade to which the

³ The area concerned regards the 3rd Corps zone of responsibility.

offender belonged. The follow-up to these investigations might depend on the gravity of the offence or the situation on the ground..., minor offences resulted in disciplinary measures taken by the brigade commander, while more serious crimes were the subject of a report filed by the military police with the military prosecutor. Furthermore, owing to the Travnik District Military Court's lack of efficiency and difficult communications with Travnik caused by combat, the 306th Brigade military police undertook disciplinary measures more often than it filed complaints with the District Military Prosecutor in Travnik.

901. By decision of the Presidency of the Republic of Bosnia and Herzegovina, district military courts were created in late 1992 primarily to try the unlawful actions of members of the ARBiH. At the same time, the Croatian Community of Herceg-Bosna put in place a parallel system of military courts. Originally, the military court and its military prosecutor were installed in Travnik. Then, as of June 1993, these institutions had their headquarters in Vitez and operated in the zones controlled by the HVO.

902. The creation of military disciplinary courts to try disciplinary offences by all soldiers including those with the rank of officer (or higher rank) for dishonorable conduct was planned in 1992 by the Presidency of Bosnia and Herzegovina and put in place within the 3rd Corps in May 1993.

903. At the same time, the Presidency of Bosnia and Herzegovina adopted a decree-law to set up special military courts that could be put in place by order of the commander of a brigade or a higher rank to punish army members who committed offences linked to the performance of their duties. These courts were to be established when the situation did not allow the case to be handed over to the appropriate district military court and the gravity of the act necessitated that proceedings be instigated immediately.

904. It should also be noted that the brigade commanders and 3rd Corps Command punished soldiers' misconduct by disciplinary sanctions.

905. In addition, during the period material to the Indictment⁴, the civilian courts of Central Bosnia continued their activities in spite of combat.⁵

906. Finally, with regard to the period material to the Indictment,⁶ both military and civilian courts operated according to continental law.

907. Two military courts were established in Central Bosnia in 1992 for the duration of the war, primarily to try unlawful acts by members of the ARBiH: the Zenica District Military Court and the Travnik District Military Court. The Zenica District Military Court with its seat in Zenica was established by the Decree-law Law on District Military Courts adopted by the Presidency of the Republic of

⁴ "All acts and omissions alleged in this indictment occurred between January 1993 and 16 March 1994 in the territory of Bosnia and Herzegovina". *Prosecutor v. Hadžihasanović and Kubura*, Third Amended Indictment, para. 7.

⁵ "The Appeals Chamber finds that, while the section of the Trial Judgment on the civilian courts that operated in Central Bosnia throughout the war does not contain any indications as to whether a municipal court existed in Travnik in 1993 (Trial Judgment, paras 953-957), there could have been a court other than the Travnik District Military Court in Travnik at that time". *Prosecutor v. Hadžihasanović and Kubura*, IT-01-47-A, Judgment, 22 April 2008, fn. 614.

⁶ *Id.* at fn. 13.

Bosnia and Herzegovina. The Travnik Court with its seat in Travnik was created by an amendment to the Decree-Law on the Establishment and Work of Districts passed on 7 October 1992. The Travnik District Military Prosecutor's Office and the Zenica District Military Prosecutor's Office were established along the same lines as the organisation of the district military courts. These courts were operational throughout the war and their activities ended in 1996. The district military prosecutors' offices were dissolved earlier the same year.

909. District military courts were established primarily to try offences committed by military personnel. They also had the jurisdiction to try civilians employed in the ARBiH for offences committed in the performance of their duties and for taking part in an offence whose co-perpetrators were members of the ARBiH. They could judge civilians who were not employed by the ARBiH but who had committed offences pursuant to Article 7 of the Decree-Law on District Military Courts. Cases involving civilians submitted to the district military courts were most often the refusal to respond to a mobilisation call-up.... [H]owever, the number of cases tried by these courts involving civilians was negligible. It should likewise be noted that the district military courts had the jurisdiction to try HVO members and all prisoners of war.

910. In addition, according to witness testimony, Croatian refugees filed criminal complaints before the Travnik Military Court seated in Vitez operating as a parallel court serving the Croatian Community of Central Bosnia. The complaints were against some of the actions by ARBiH soldiers in the territories they controlled.

916. At the end of the war, complying with the same instructions as the military judicial authorities in Zenica, those in Travnik transferred their archives respectively to the Travnik Cantonal Court and the Travnik Cantonal Public Prosecutor's Office.

917. It is difficult to know exactly what happened to the archives of the Travnik District Military Court seated in Vitez that had been created by the Croatian Community of Herceg-Bosna. The judicial institutions that received the archives of the district military courts and the district military prosecutors after the conflict do not know what happened to the archives of the Vitez District Military Court or of the Vitez District Military Prosecutor's Office.

918. Upon receiving a criminal report, the Zenica or Travnik District Military Prosecutor instituted proceedings and conducted the pre-trial phase as dominus litis. He was the only authority who could determine whether there were grounds to believe that a crime had been committed pursuant to the evidence gathered after the criminal report was filed and could decide to initiate criminal proceedings. He also had the power to drop the charges if he considered that the act did not constitute a crime or if there were other circumstances that precluded prosecution. In addition, the prosecutor could decide not to prosecute if there were no indicia that a crime had been committed. If he decided to undertake proceedings, he submitted a request for a preliminary examination to the investigating judge. Without such a request, the investigating judge did not have the authority to act.

919. Criminal reports or complaints submitted to district military prosecutors could come from the following sources: the military police, the civilian police, civilians or members of ARBiH brigade commands (or of a higher rank). It should be noted, however, that the number of criminal reports filed by organs other than the

Military Police Battalion was negligible.

920. The military police were responsible for identifying the perpetrators of criminal offences within the ARBiH (or the HVO) and were the organ which filed most of the reports on criminal actions by members of the ARBiH. The ARBiH internal military security organs also submitted criminal reports to the district military prosecutors.

921. The civilian police or Public Security Centre (CSB) could also submit reports to the district military prosecutors...

922. Pursuant to the law in Bosnia and Herzegovina at the time, every citizen had the duty to report all unlawful actions to the judicial authorities. Furthermore, when there was a *partie civile*, civilians could file complaints with the prosecutor. In the present case, there were instances when civilians went to the district military courts to report criminal acts. The investigating judge would tell them to report the incidents to the district military prosecutors' offices that registered the complaints and asked the police to investigate the allegations to check their veracity.

925. Once the prosecutor submitted a request to the investigating judge for a preliminary investigation pursuant to Chapter 16 of the Republic of Bosnia and Herzegovina Law on Criminal Procedure, the investigating judge carried out the complete investigation independently. It was his duty to examine the evidence and submit a report to the prosecutor. The report was usually sent to the police as well.

926. To do so, the investigating judge could go to the crime scene or to locations relevant to the investigation. He could order photographs to be taken and other examinations made, such as a paraffin test or an autopsy or any other measure to facilitate the investigation. He alone had the power to question witnesses or suspects. Thus, no actions could be undertaken other than those prescribed by the judge. Furthermore, if any other judicial authority questioned witnesses during the investigation, their statements were removed from the case file.

939. The Rules on Military Discipline set up first instance military disciplinary courts and the High Military Disciplinary Court as of 1992. These courts had the jurisdiction to try the "disciplinary infractions or errors" not only of all the soldiers but also those of officer (or higher) rank for all "breaches of military discipline". Military disciplinary courts of first instance were set up at district territorial Defense headquarters and their operations were apparently under the district territorial Defense staff. Then these courts were to be organised by the Corps commands.

941. The first instance military disciplinary court seems to have been established on 8 May 1993. The Chamber notes that according to the exhibits, this court was attached to the 3rd Corps and seems to have sat during the period material to the Indictment...

944. During the same period, among the punishments anticipated by Enver Hadžihanović for soldiers guilty of reprehensible acts was that they would be tried by a "court-martial" or a "special court" in order to prevent and punish plundering or the destruction of dwellings, to ensure that the ARBiH soldiers respected the Geneva Conventions with regard to the treatment of the civilian

population and prisoners of war, and to protect places of worship.

953. Civilian courts operated in Central Bosnia throughout the war and were independent of the ARBiH. They were divided into municipal courts and municipal public prosecutors, and high courts and high public prosecutors. The high court is currently called the cantonal court. Municipal courts had jurisdiction to try cases with penalties of up to ten years and the high court prosecuted cases with a penalty of over ten years...⁷

954. Civilian courts had the jurisdiction to try criminal offences committed both by civilians and in certain cases by soldiers. If a soldier and a civilian were co-perpetrators of a criminal offence, the civilian court having jurisdiction to hear the case against the civilian also had jurisdiction to try the soldier. If the criminal offence was committed by the soldier in the performance of his duties, however, both the soldier and the civilian would be tried by a district military court.

Reasoning

2. The Law on the Transfer of Cases applies to the case at hand because although it is not the case transferred from the ICTY to the Prosecutor's Office of BiH, the Law on the Transfer of Cases allows for the admissibility of evidence collected by the ICTY in proceedings before the courts in BiH.⁸ Article 4 of the Law on the Transfer of Cases⁹ stipulates that at the request of a party or proprio motu, the Court, after hearing the parties, may decide to accept as proven those facts that are established by legally binding decisions in any other proceedings by the ICTY or to accept documentary evidence from proceedings of the ICTY relating to matters at issue in the current proceedings. The Trial Panel may, ex officio, admit facts based on the criteria indicated below.

3. The procedure of acceptance of established facts is primarily intended to ensure the expediency of the proceedings. By acknowledging these established facts, the Court achieves judicial economy in the sense that it condenses the relevant proceedings to what is essential for the case of each party and eliminates the necessity to prove again the fact that has been previously adjudicated in past proceedings. The procedural legal impact of taking notice of an established fact is that burden of proof to disqualify the fact is shifted in

⁷ Ibid. at fn. 14.

⁸ Article 1(1) of the Law on the Transfer of Cases states that “[t]he provisions set forth in this Law shall regulate the transfer of cases by the International Criminal Tribunal for the former Yugoslavia (hereinafter: ICTY) to the Prosecutor’s Office of BiH and the admissibility of evidence collected by the ICTY in proceedings before the courts in BiH.”

⁹ Article 4 of the Law on the Transfer of Cases states that “[a]t the request of a party or *proprio motu*, the courts, after hearing the parties, may decide to accept as proven those facts that are established by legally binding decisions in any other proceedings by the ICTY or to accept documentary evidence from proceedings of the ICTY relating to matters at issue in the current proceedings.”

this instance from the Defense to the Prosecution. If during a trial, an opposing party wants to dispute an established fact of which the Court has taken notice, the opposing party has a right (as a matter of safeguarding the fairness of the trial) to submit evidence that calls into question the veracity of the established facts.¹⁰

4. The Court emphasizes that its first concern is to ensure that the Accused is offered a speedy and fair trial in accordance with Article 13 of the CPC of BiH and Article 6(1) of the European Convention on Human Rights (“ECHR”). Accordingly, as long as this principle is upheld, the Court has a duty to avoid waste of unnecessary time and resources. These ex officio facts proposed by the Trial Panel also serve this purpose as it reduces the potential need for the Trial Panel to call ex officio witnesses.

5. Article 4 leaves to the discretion of the Trial Panel the decision as to whether to accept or propose the facts. Neither the Law on the Transfer of Cases nor the CPC of BiH provide for the criteria upon which the Trial Panel might rely in exercising its discretion. In *Đukić*, X-KR-07/394 (Ct. of BiH) Established Facts Decision of 13 November 2008, the Trial Panel set out the criteria it considered appropriate to apply in the exercise of its discretion under Article 4.¹¹ These criteria take into account the rights of the Accused under the BiH law, incorporating the fundamental rights protected by the ECHR. At the same time the Trial Panel was mindful of the ICTY jurisprudence developed in interpreting Rule 94 of the ICTY Rules of Procedure and Evidence.¹² The Panel notes that Rule 94 and Article 4 of the Law on the Transfer of Cases are not identical and that the Panel is not in any way bound by the decisions of the ICTY. However, it is self evident that some of the issues confronting the Tribunal and panels of the Court of BiH are similar when considering established facts, and that therefore the considerations will likewise be similar. Upon review of these criteria in light of the ex-officio admissions, the Trial Panel utilized these same criteria in order to ensure fairness to all parties and the integrity of the trial process.

¹⁰ Article 6(2) of the CPC of BiH and Article 6(3) d) of the ECHR.

¹¹ See also *Stupar et al.*, X-KR-05/24 (Ct. of BiH), Established Facts Decision, 3 October 2006; *Tanasković*, X-KR-06/165 (Ct. of BiH), Established Facts Decision, 26 June 2007; *Lelek*, X-KR-06/202 (Ct. of BiH), Established Facts Decision, 3 July 2007.

¹² Rule 94(B) states that „[a]t the request of a party or *proprio motu*, a Trial Chamber, after hearing the parties, may decide to take judicial notice of adjudicated facts or documentary evidence from other proceedings of the Tribunal relating to the matters in the current proceedings.”

6. Before taking the decision on the facts to be accepted as established, the Panel sent the proposed established facts to the parties and asked them to submit their response. In their written response submitted to the Court on 18 February 2011, the Prosecution pointed out that the ICTY Appeal Judgment in the *Prosecutor v. Hadžihasanović and Kubura* case, IT -01-47-A, dated 22 April 2008 set aside all the Trial Chamber's findings with regard to the events in the Bugojno Municipality and, therefore, the facts cannot be accepted as established. The Prosecution further contended that the remaining facts are irrelevant to the case given that the structure of a military police battalion within the 3rd Corps and the military police platoon within the 307th Brigade or a company within the "OG West" is not the same. In addition, the Prosecution moved that the fact from paragraph 1580 relating to the road that connected Bugojno and Zenica be refused. Therefore, the Prosecution moved that the proposed facts be refused or that the Panel postpone the decision on this matter pending the completion of the presentation of evidence by both the Prosecution and the Defense.

7. In addition to their written submissions, all parties were heard at the hearing held on 23 February 2011.

8. The Defense for the Accused also responded to the proposed facts. Defense for the Accused Nisvet Gasal and Musajb Kukavica agreed that all the proposed facts be accepted.

9. The Defense for Enes Handžić pointed out that they opposed the acceptance of the facts under paragraphs 1580 through 1583 as relating to the Brigade of which Enes Handžić was a member, and to consider paragraphs 155 through 164 from the Appeal Judgment in the *Prosecutor v. Hadžihasanović and Kubura* case which relate to Bugojno, submitting the same arguments as the Prosecution.

10. Defense for the Accused Senad Dautović pointed out that they were opposed to the acceptance of the fact from paragraph 1584.

Criteria for established facts

11. Therefore, the panel took into account the following criteria:

1. A fact must truly be a "fact" that is:

sufficiently distinct, concrete and identifiable;

not a conclusion, opinion or verbal testimony;

not a characterization of legal nature.

2. A fact must contain essential findings of the ICTY and must not be significantly changed.

3. A fact must not attest, directly or indirectly, to the criminal responsibility of the Accused.

4. Nevertheless, a fact that has gained such a level of acceptance as true that it is common knowledge and not subject to reasonable contradiction can be accepted as adjudicated fact even if it relates to an element of criminal responsibility.

5. A fact must be 'established by a legally binding decision' of the ICTY, which means that the fact was either affirmed or established on appeal or not contested on appeal, and that no further opportunity to appeal is possible.

6. A fact must be established in the proceedings before the ICTY in which the Accused against whom the fact has been established and the accused before the Court of BiH have the same interests with reference to contesting a certain fact. Accordingly, the facts stated in the documents which are a subject of a plea agreement or voluntary admission in the proceedings before the ICTY shall not be accepted, given that the interests of the accused in such cases are different, often contrary to the interests of those accused who utilized their right to a trial.

7. A fact must be established in the proceedings before the ICTY, in which the accused against whom the fact has been established had legal representation and the right and opportunity to defend himself. It is therefore clear that the acceptance of the fact deriving from the proceedings in which the Accused has not tested it by his evidentiary instruments is unacceptable for this Panel. Even more so because the accuracy of that fact is questionable, since the Accused did not have the opportunity (or had insufficient opportunity) to respond to it and try to contest it.

12. Relying on the above criteria, the Panel assessed that the above stated facts from the ICTY Trial Judgment in *Prosecutor v. Hadžihasanović and Kubura*¹³ meet the above mentioned criteria. In addition, the Panel accepted the submissions of the Defense for the Accused and refused to accept as established the facts under paragraphs 1580 through 1584 from the Trial Judgment, and refused as unfounded the motion of the Prosecution with the exception of their objection to paragraph 1580. With regard to the submission of the Defense for the third Accused that the facts relating to the events in Bugojno be refused because according to the Prosecution and Defense for the third Accused, the Trial

¹³ *Prosecutor v. Hadžihasanović and Kubura*, IT-01-47-T, Judgment, 15 March 2006.

Chamber's findings were overturned in paragraphs 155 and 164 of the *Hadžihasanović and Kubura* Appeal Judgment, the Trial Panel refuses this as the appropriate legal ground as these paragraphs relate to the individual criminal responsibility of General Hadžihasanović, rather than the ICTY Trial Chamber's findings of fact regarding the events in Bugojno. However, the Trial Panel accepts the reasoning that these facts are being challenged by the Defense and in the case of paragraph 1580 being challenged by both the Defense and the Prosecution.

3. Decision on the joinder of proceedings

1. On 23 January 2008, the Court rendered the Decision to grant the motions of the Defense for Nisvet Gasal, Musajb Kukavica and Senad Dautović and join the criminal proceedings, number X-KR-07/341-1 against the Accused Nisvet Gasal and Musajb Kukavica with the criminal proceedings, number X-KR-07/341 against Enes Handžić and Senad Dautović.

Reasoning

2. At the hearing held on 14 December 2007, Defense Counsel for the accused Nisvet Gasal and Musajb Kukavica filed to the Court the Motion to join the proceedings with the criminal proceedings, number X-KR-07/341 against Enes Handžić and Senad Dautović in accordance with Article 25(2) of the CPC of BiH. The Defense Counsel submit that by analyzing the Indictment of the Prosecutor's Office of Bosnia and Herzegovina number KT-RZ-125/07 dated 18 September 2007 and the Indictment number KT-RZ-162/05 dated 7 December 2007, one can conclude that the factual descriptions of these two indictments are completely identical, and that there is objective connection, that is, that several persons participated in the commission of the criminal offense. The Defense Counsel further submit that the same persons are mentioned as aggrieved parties and that given the large amount of evidence, separate trials would imply repetition of the same evidence and summoning of the same witnesses, which should be taken into consideration particularly with respect to traumatized witnesses.

3. On 24 December 2007, the Prosecution filed with the Court their Response to the Defense motion in which it stated that it is not opposed to the motion and that it leaves it to the Court to decide on the motion in accordance with Article 25 of the CPC of BiH.

4. On 17 January 2008, the hearing was held to discuss the motion and the

opportunity to state their position was given to the accused Enes Handžić and Senad Dautović, as well as their defense counsel. Defense Counsel for the Accused Enes Handžić, attorney Fahrija Karkin opposed the motion on the grounds that he did not receive the Indictment against the accused Nisvet Gasal and Musajb Kukavica. As a result, he argued that he was not in a position to state his position in relation to the motion.

5. On 23 January 2008, the Court held a status conference to further discuss the motion, at which the accused Nisvet Gasal, Musajb Kukavica and Senad Dautović, as well as their defense counsel Senad Kreho, Fadil Abaz and Refik Serdarević and the Prosecution stated that they were in agreement to have these two proceedings joined. Defense Counsel for the Accused Enes Handžić, attorney Fahrija Karkin opposed the motion arguing that the requirements to join these two proceedings under the CPC of BiH have not been met and that there is neither subjective nor objective connection between these two indictments.

6. Having reviewed the motion, submissions of the parties to the proceedings and the case-files of this Court number X-KR-07/341 and X-KR-07/341-1, the Panel decided as stated in the operative part for the reasons explained below.

7. Article 25(2) of the CPC of BiH reads: "The Court may decide to conduct joint proceedings and render a single verdict even if several persons have been charged with several criminal offenses on the condition that there is a mutual relation between those criminal offenses."

8. Having reviewed the case-file, the Court notes that under the Indictment of the Prosecutor's Office of BiH number KT-RZ-125/07 of 18 September 2007, under counts I and II, the accused Nisvet Gasal and Musajb Kukavica are charged with having committed the criminal offense of War Crimes against Civilians in violation of Article 173(1)(c) and (f), in conjunction with Article 180(1) and (2) and Article 29 of the CC of BiH, while under the Indictment of the Prosecutor's Office of BiH number KT-RZ-162/05 of 7 December 2007, under counts I, II and III, the accused Enes Handžić and Senad Dautović are charged with having committed the criminal offense of War Crimes against Civilians in violation of Article 173(1)(a), (c), (e) and (f), War Crimes against the Wounded and Sick in violation of Article 174(1)(a) and (b), War Crimes against Prisoners of War in violation of Article 175(1)(a) and (b) of the CC of BiH, all in conjunction with Article 180(1) and (2) and

Article 29 of the same Code.

9. Further, the Court notes that there is a connection between the factual description under counts I and II of the Indictment number KT-RZ-125/07 and the factual description under counts I (9) and II (3) of the Indictment number KT-RZ-162/05. Moreover, 40 out of 43 witnesses proposed in the Indictment KT-RZ-125/07 were also proposed as witnesses in the Indictment number KT-RZ-162/05.

10. Based on the foregoing, the Panel decided to merge the proceedings.

4. Decision granting protective measures to the witness in line with the protective measures granted by the Decision of the International Criminal Tribunal for the former Yugoslavia (Witness D)

1. In the Indictment the Prosecution proposed the examination of Witness D. Under the Decision of the Court of BiH number X-KRN-07/341 of 14 September 2007, this witness's identity was to remain confidential and the witness was granted a pseudonym D.

2. After the commencement of the main trial, the Prosecution proposed his examination for 21 January 2009. At the hearing held on 21 January 2009 the Prosecution informed the Trial Panel that the witness had testified before the International Criminal Tribunal for the former Yugoslavia and that protective measures had been granted to him in those proceedings.

3. The Prosecution informed the Court that Witness D testified in *Prosecutor v. Hadžihasanović and Kubura* and that protective measures in the form of attribution of a pseudonym and use of image distortion when testifying were granted to him in those proceedings. The ICTY Decision on these protective measures was stored in the confidential part of the case-file.

4. Under Rule 75F of the ICTY Rules of Procedure and Evidence, the Trial Panel granted the same protective measures to Witness D in the present proceedings.

5. Examination of protected witnesses

1. Under decisions of the Court of BiH, number X-KRN-07/341 of 20 April 2007, 15 May 2007 and 14 September 2007, the Court granted protective measures to a total of

three (3) witnesses in the present proceedings. Under these decisions all personal data of the protected witnesses, names and surnames and other personal data of these witnesses were to remain confidential, and they were provided with the opportunity to give their testimony in the present proceedings with the use of electronic devices for image or voice distortion, or both image and voice distortion, technical devices for the image and sound transmission, along with the ban on publishing the witnesses' photographs in the media.

2. In the course of the proceedings, apart from the protection of Witness A's identity, the Panel decided to have Witness A give evidence from a separate room with both image and voice distortion. At the hearing when this witness was examined, the Prosecution moved the Court to grant additional protective measures to this witness in the form of exclusion of the public during his testimony. Defense for all the accused opposed this motion. The Panel examined the witness in relation to these circumstances and again informed him of the protective measures already granted to him. The Panel accepted the Prosecution's motion to grant additional protective measures to the witness and found that the reasons given by Witness A were justified. The Panel rendered the decision on protective measures at the hearing held on 5 November 2008 with the consent of the witness.

3. In the course of the proceedings, apart from the protection of Witness B's identity the Panel decided to have Witness B give evidence from a separate room with both image and voice distortion. At the hearing when this witness was examined, the Prosecution moved the Court to grant additional protective measures to this witness in the form of exclusion of the public during his testimony. Defense for all the accused opposed this motion. The Panel examined the witness in relation to these circumstances and again informed him of the protective measures already granted to him. The Panel accepted the Prosecution's motion to grant additional protective measures to the witness and found that the reasons given by Witness B were justified. The Panel rendered the decision on protective measures at the hearing held on 26 November 2008 with the consent of the witness.

4. During the entire proceedings the Court was mindful of protecting the identity of protected witnesses taking due precautions not to reveal any information and hence, these witnesses are referred to in the Verdict only by pseudonyms attributed to them. All information about the protected witnesses is kept in the confidential part of the case-file.

The Panel explained above protective measures granted to Witness D.

6. Decision refusing the Prosecution's Motion to present rebuttal evidence

1. In the course of the main trial, the Prosecution filed on 11 February 2011 the Motion to present evidence refuting the evidence adduced by the Defense in accordance with Article 261(2)(c) of the CPC of BiH.

2. In that regard, the Prosecution proposed the examination of the following sixteen witnesses: Besim Učambarlić, Meho Habib, Salko Kartal, Marinko Lučić, Stipo Miloš, Ivica Kajić, Slava Vasilić, Zdravko Križanac, B-1, B-2, B-3, B-4, B-5, B-6, B-7, B-8, and reading of the statement of witness Selmo Cikotić in accordance with Article 5 of the Law on the Transfer of Cases from the ICTY to the Prosecutor's Office of BiH and the Use of Evidence Collected by ICTY in Proceedings Before the Courts in BiH. In their motion the Prosecution explained reasons as to why they request the examination of proposed witnesses and reading of the statement of one witness. The Court forwarded this motion to the accused and their defense counsel in order to have them respond to it. At the hearing held on 23 February 2011, parties to the proceedings and the defense counsel verbally stated their position in relation to the motion. The Prosecution stated that they maintain their written motion and that although witness Selmo Cikotić was available, they still proposed that his statement given to the ICTY investigators be read out in order not to jeopardize the ongoing investigation by the Prosecutor's Office of BiH. The Prosecution stated that the rationale behind reading the statement is to discredit the evidence witness Selmo Cikotić gave as the defense witness in the present case, adding that they are not opposed to the Defense cross examining the witness in relation to the circumstances from the above mentioned statement, should the Defense wish to cross examine this witness. Moreover, in response to the question by the Court, the Prosecution explained that at the time of examination of this witness as the defense witness, they were not in possession of the information that this witness gave a statement to the ICTY investigators.

3. Defense Counsel for the Accused Nisvet Gasal opposed the reading of the statement of witness Selmo Cikotić and stated that the witness should be verbally examined. Defense Counsel for the Accused Musajb Kukavica also stated that the witness should be verbally examined given that he is available. Defense Counsel for the Accused Enes Handžić stated he did not see how verbal examination of witness Selmo Cikotić would jeopardize an investigation and suggested that he should be summoned in

the interest of justice and that he should be accompanied by his legal advisor at the time of examination. Defense Counsel for the Accused Senad Dautović agreed with his colleagues and stated that he was also opposed to the admission of this statement into evidence.

4. Having heard the arguments by the Prosecution and the Defense for the accused, the Panel rendered on 23 February 2011 the procedural decision refusing the Prosecution's motion as unfounded.

5. Article 261(2)(c) of the CPC of BiH allows for presentation of prosecution evidence rebutting evidence of the defense, the so called rebuttal evidence. Subjective evidence refuting evidence adduced by the Defense may be defined as evidence that is not cumulative, that is, evidence that cannot be a repetition of the evidence already presented by the Prosecution at the main trial. The purpose of rebuttal is to rebut new evidence or new theories, which the Defense presented as part of their case.

6. On the other hand, the Panel has discretion to decide which evidence to accept and which evidence to refuse depending on the circumstances of the concrete case. Rebuttal evidence is closely linked with the already presented evidence. Subjective evidence that is proposed only in support of the arguments already made in an earlier stage of the proceedings cannot be presented in rebuttal, unless the evidence serves the purpose of refuting or discrediting subjective evidence of the opposing party, or minimizing their unfavorable effect.

7. Based on the foregoing, the Panel finds that the motion to read the statement of witness Selmo Cikotić is unfounded. The Panel was mindful of Article 5 of the Law on the Transfer of Cases from the ICTY to the Prosecutor's Office of BiH and the Use of Evidence Collected by ICTY in Proceedings before the Courts in BiH that permits the reading of the statement given by a witness to the ICTY.

8. The Panel was also mindful of the availability of this witness and the fact that the witness already testified in the present case as witness for the defense, at which time the Prosecution had the opportunity to cross examine him. The Panel does not accept the Prosecution's proposal to use the possibility provided under Article 5 of the Law on the Transfer of Cases for the purpose of rebuttal, especially bearing in mind that by reading the statement the Prosecution intended to discredit the witness's testimony given at the

main trial in the present case, with respect to which the Prosecution had the opportunity to verbally examine the witness. Given that the purpose of reading the witness's statement is to discredit his testimony given at the main trial, the Panel notes that the witness has to be summoned and verbally examined.

9. Moreover, although the Prosecution stated that they came into possession of the statement given by witness Selmo Cikotić to the ICTY investigators only after his testimony in the Gasal et al. case, the Panel does not accept this argument given that this evidence was available to the Prosecution beforehand. The test is not when the Prosecution came into possession of this evidence but rather the time when it could have reasonably come into possession of this evidence, which is clearly by the time of his live testimony before the Court of BiH.

10. As for the examination of other rebuttal witnesses, the Panel refused the Prosecution's motion because their examination is proposed in order to corroborate evidence already presented in the Prosecution case. As stated above, parties to the proceedings are not given the opportunity in rebuttal to present evidence in relation to something they have already tried to prove and the evidence that was available during the main trial. The Panel finds that the Prosecution has already presented evidence in relation to the facts about which the proposed rebuttal witnesses would testify. Hence, this testimony would be inadmissible to rebut the evidence of the defense.

11. If the Court finds it to be in the interest of justice and fairness, it may allow for presentation of proposed subjective evidence in rebuttal, but in that regard it is necessary to bear in mind the principle of equality of arms.

7. Decision of 27 April 2011 refusing the Motion by the Defense for Senad Dautović to accept established facts dated 23 February 2011

1. By its Decision of 27 April 2011, the Court refused the Defense Motion to accept established facts dated 23 February 2011 from the Judgment in *Prosecutor v. Hadžihasanović and Kubura*, 15 March 2006 (IT-01-47-T), namely the facts from the following paragraphs:

20. The Chamber considers that there is sufficient evidence to find that during the period material to the Indictment, an armed conflict between the HVO and the ARBiH raged in the municipalities referred to in this case. Some witnesses

stated that as of late 1992 there were already confrontations between the two armies in the Lašva Valley, Gornji Vakuf, Busovača, Prozor, Novi Travnik and Kiseljak. Those confrontations carried on into January 1993 and then spread to other municipalities in Central Bosnia. Orders and cease-fire agreements between the ARBiH and HVO in late January 1993 indicate that there was an armed conflict between those two armies at that time.

22. ... During the summer and autumn of 1993, fighting between the ARBiH and the HVO continued...

22. ... The Chamber also notes that in their testimony many witnesses referred to the "conflict", "hostilities" or "war" between the HVO and the ARBiH.

23. Furthermore, cease-fire orders issued by the general staffs of both armies and the political leaders representing the two parties to the conflict imply that there was an armed conflict between the two armies on the date of the agreements...

23. ... The fact that representatives from international organizations were there attempting to broker and enforce cease-fire agreements is additional evidence making it possible to infer that there was in fact an armed conflict in the municipalities and during the period referred to in the Indictment...

23. ... The repeated failed attempts to form a joint command between the HVO and the ARBiH only underscore the fact that there was an ongoing armed conflict in the Lašva Valley during the period in question.

316. ... This document delineates the tasks of an army corps command covering the following areas: command/staff; political/legal; self-protection issues; security; personnel; logistics (support); and general affairs. Each area corresponded to a specific organ in the army corps structure: staff; political and legal affairs; security services; and development planning and finance. Self-protection was the responsibility of all organs of the Corps Command as part of their official duties.

317. The Chamber notes that the ARBiH Supreme Command Main Staff consisted of the following organs: Operations and Training including the Operations Command Centre, Combat Arms Administration, Logistics Administration, Personnel Administration, Administration for Morale, Information and Propaganda, and Religious Affairs, Intelligence Administration, Security Administration and Legal Administration...

324. For the purposes of this Judgment, certain organs within the 3rd Corps Command Staff should be mentioned: the Operations Centre, the Communications Centre and the Military Security Service.

377. Finally, the Chamber notes that the Rules for the Work of the Military Security Service within the RBiH Armed Forces states that the members of the Security Service are subordinated to the commander of their unit: Members of the Military Security Service shall be responsible for their work to the commander of the unit in which they serve.

378. Similarly, the Regulations of the Work of the Military Police within the RBiH Armed Forces state that the military police are subordinated to the commander of the unit to which they are attached. 7. The military police are commanded and controlled by the senior officer of the military unit or institution incorporating the

unit of the military police, to which it is attached. 8. Professionally, the military police are headed by the senior officer of the military security service in which the unit of the military police is incorporated or to which it is attached. He is responsible for the combat readiness of the military police unit. Decisions on the combat use of a military police unit shall be taken by the unit commander at the proposal of the competent senior officer of the military security service.

2. Defense failed to give a legal basis in support of their Motion to accept these facts established by the ICTY, and failed to give adequate reasons for the acceptance of the proposed facts.

3. On 27 April 2011, the Panel refused this Defense motion.

4. The Panel holds that the proposed facts are not relevant for charges against the accused. Additionally, the Panel notes that in the course of the main trial and by the time the Defense filed the Motion to accept established facts, it has already heard sufficient evidence in relation to the circumstances to which the proposed facts refer.

8. Decision on the separation of the proceedings in relation to the Accused Enes Handžić

1. On 27 April 2011, the Court rendered the Decision to separate the criminal proceedings against the accused Nisvet Gasal, Musajb Kukavica, Senad Dautović and Enes Handžić, and to conduct and complete proceedings against the Accused Enes Handžić separately under a new number S1 1 K 005760 11 Krl.

2. With respect to the accused Nisvet Gasal, Musajb Kukavica and Senad Dautović, the proceedings will be conducted under the existing number S1 1 K 003485 07 Krl.

3. No appeal lies from this Decision.

Reasoning

4. Following the 23 January 2008 decision on the joinder of cases, the criminal proceedings against the accused Nisvet Gasal, Musajb Kukavica, Senad Dautović and Enes Handžić, which is underway before the Court of Bosnia and Herzegovina, has been conducted as single proceedings for all the accused.

5. On 26 April 2011 the Prosecution submitted the Plea Agreement concluded with the Accused Enes Handžić and the Motion for severance of the proceedings. Subsequently, the Court held a hearing allowing the parties and Defense Counsel to state their opinions on the possible severance of the criminal proceedings in relation to the Accused Enes

Handžić.

6. At the hearing held on 27 April 2011, the parties and the Defense Counsel did not have any objections to the aforementioned motion on the severance of the proceedings.

7. Article 26(1) of the CPC of BiH stipulates that the Court may, for important reasons or for reasons of purposefulness, decide to separate the proceedings against certain accused persons and complete them separately.

8. Given that the Accused Enes Handžić concluded the plea agreement with the Prosecutor's Office of BiH on 26 April 2011, the Court finds the severance of the proceedings in relation to this accused to be necessary for the reasons of purposefulness, so that it could deliberate on the agreement and render a decision.

9. In view of the above and given that the defense counsel for the accused did not oppose the severance of the proceedings in relation to the Accused Enes Handžić from the proceedings conducted against the accused Nisvet Gasal, Musajb Kukavica and Senad Dautović, the Court decided to sever the proceedings in accordance with Article 26(1), as read with subparagraph (2) of the CPC of BiH.

9. Decision on appointment of legal advisors to witnesses Dževad Mlaćo, Enes Handžić and Selmo Cikotić

1. On 24 March 2010 Dževad Mlaćo was summoned as a witness for the Defense of the third Accused Enes Handžić. After the commencement of the examination of witness Dževad Mlaćo, the Panel decided that a legal advisor be assigned to witness Dževad Mlaćo in accordance with Article 84(5) of the CPC of BiH. At the same hearing, the witness informed the Panel that he engaged the services of attorney Asim Crnalić and that he would be his legal advisor during his testimony in this case. The Panel adjourned the examination of this witness and scheduled another date for the continuation of his examination.

2. The Panel decided as stated above in order to protect the interests of the witness given that the witness does not have legal training and his testimony was potential legally incriminating.

3. On 21 April 2010, Selmo Cikotić was summoned to testify as a witness for the

Defense of the third Accused Enes Handžić. During the examination of this witness, the Panel decided to assign a legal advisor to witness Selmo Cikotić in accordance with Article 84(5) of the CPC of BiH. At the same hearing, the witness informed the Court that he would engage the services of attorney Fahrudin Ibrišimović and that he would be his legal advisor during his testimony in this case. The Panel adjourned the examination of this witness and scheduled another date for the continuation of his examination.

4. The Court decided to assign a legal advisor to the witness in order to protect his interests. He does not have legal training and his testimony was potentially legally incriminating. On 20 April 2011, witness Selmo Cikotić was examined as a witness of the Court in the presence of his legal advisor Fahrudin Ibrišimović.

5. On 31 May 2011, the Court rendered a decision assigning attorney Fahrija Karkin as the legal advisor to witness Enes Handžić for the duration of his testimony at the main trial.

Reasoning

6. In the course of the evidentiary proceedings in the case against the accused Nisvet Gasal, Musajb Kukavica and Senad Dautović, the Prosecution proposed that Enes Handžić be heard as a witness for the prosecution.

7. Given that Enes Handžić signed the plea agreement with the Prosecution and that he had been found guilty in relation to the events that he was going to testify about at the main trial in the case against the above-mentioned accused persons, the Panel concluded that the witness could not exercise his rights during the testimony and that his interests could not be protected in some other manner. Consequently, the Court decided to assign a legal advisor to the witness during his testimony in accordance with Article 84(5) of the CPC of BiH.

10. Decision refusing the Motion by the Defense for Senad Dautović to read the witness's statement

1. On 3 November 2010, Defense for the Accused Senad Dautović proposed the reading of the statement given on 19 September 1994 by the witness for whom the Defense also planned to seek protective measures, which is why the Panel will not mention the witness's name in this section of the Verdict.

2. Defense stated that the person in question is a victim who is not willing to appear before the Court. According to the Defense averments, this witness would testify in relation to the circumstances pertaining to joint patrols and the crime in Vrbanja.

3. On 1 December 2010, the Panel decided to refuse this motion.

4. The Panel holds that the proposed statement of witness S.Š. is not relevant for criminal acts charged against the Accused Senad Dautović. By analyzing the statement, it is evident that this proposed evidence was only to give background information and as such it did not concern any of the counts of the Indictment in the case against the accused Nisvet Gasal et al. Likewise the Panel already had received evidence of a similar nature.

11. Decision to refuse objections by the Defense in relation to the Amended Indictment exceeding the scope of the original Indictment

1. On 29 June 2011, the Prosecution filed with the Court the Amended Indictment against the accused Nisvet Gasal, Musajb Kukavica and Senad Dautović.

2. On 12 July 2011, attorney Refik Serdarević filed a submission with the Court arguing that the Amended Indictment exceeds the scope of the original Indictment with respect to the accused Senad Dautović. It is averred in this submission that by comparing the factual description in the Indictment number KT-RZ-102/07 of 11 December 2007 with the factual description in the Amended Indictment of the Prosecutor's Office of BiH of 29 June 2011, it follows that the Prosecution changed the factual description of the Indictment in Count 1 a) in which the position of the Accused Dautović has been specified. The change between the original and Amended Indictment is reflected in the wording Unified Command of the Army of RBiH Bugojno - Defense of Bugojno town.

3. Further, Defense for Dautović submits that it is alleged under Count 10(a) of the Amended indictment dated 29 June 2011 that Senad Dautović acted as a co-perpetrator in the activities undertaken by the accused Nisvet Gasal and Musajb Kukavica.

4. Defense for the Accused Dautović submits that the charge has been exceeded with respect to the Accused Senad Dautović in violation of Article 228(6) of the CPC of BiH. As a result, the Defense argues that the Amended Indictment should be submitted for confirmation. In addition, Defense for Dautović submits that the Amended Indictment puts the accused in a more difficult procedural position.

5. Moreover, the Defense argues that the exceeding of charges ultimately resulted in violation of the right to a defense and that exceeding of charges poses an obstacle to consider the merits of the criminal matter, that is, it is a circumstance that does not allow the court to even consider the criminal matter at hand.

6. On 15 July 2011, Defense for the Accused Nisvet Gasal filed a submission in which they also argued that the Amended Indictment of 29 June 2011 exceeded the scope of charges. Defense argues that the exceeding of charges is reflected in Count 10(a) in which, apart from Article 173(1)(c) and (f), under the Amended Indictment the Accused is also charged under subparagraph (e).

7. Further, the Defense submits that under the Amended Indictment the Accused Nisvet Gasal is charged with the acts described in Article 31 of the CC of BiH, as read with Article 180(1) and (2) and Article 29 of the CC of BiH, and that the acts described in Article 31 of the CC of BiH were not charged against the Accused under the originally confirmed Indictment. Defense further submits that the charge with respect to the Accused Nisvet Gasal has been exceeded in Count 10(c).

8. Defense argues that the exceeding of charges results in violation of the right to a defense and that expanding on the legal qualification implies changes to the factual description of the offense from the Indictment, which puts the Accused in a more difficult procedural position.

9. Defense for the Accused Nisvet Gasal argues that under the Amended Indictment the Prosecution charged the Accused with a more serious criminal offense than the one he had been charged with under the originally confirmed Indictment. Arguably, this constitutes a proscribed exceeding of charges in Count 10 a) and 10 c) of the Amended Indictment dated 29 June 2011.

10. At the hearing in the Gasal et al. case held on 15 July 2011, all defense counsel and the accused confirmed that they received the Amended Indictment of 29 June 2011 and they were given the opportunity to state their position in relation to it.

11. Defense for the Accused Nisvet Gasal stated at this hearing that they maintain their written submission and reiterated the position that the Amended Indictment of the Prosecutor's Office of BiH dated 29 June 2011 exceeds the scope of charges of the

original Indictment and that for this reason it should be submitted for confirmation.

12. Defense for the second Accused Musajb Kukavica stated that they concur with the position taken by the Defense for the first Accused and that it is obvious that the Prosecution significantly expanded the factual description compared to the earlier Indictment, which is evident in Count 10(a) of the Amended Indictment.

13. Defense for the third Accused Senad Dautović also stated that they maintain their written submission and that they are of the view that the Amended Indictment exceeded the scope of the original Indictment and that it should be submitted for confirmation.

14. The Prosecution submits that the factual description has been made more precise, that the charges have not been exceeded and that the subjective and objective identity of the Indictment has not been compromised.

15. At the hearing held on 15 July 2011, the Court decided to accept the Amended Indictment of the Prosecutor's Office of BiH dated 29 June 2011 and to refuse objections made by the Defense. The Panel holds that the factual description and legal qualification have not been expanded in the Amended Indictment of the Prosecutor's Office of BiH dated 29 June 2011 in such a way to put the Accused in a more difficult procedural position, and that the amendment of the Indictment was done in accordance with Article 275 of the CPC of BiH given that the Prosecution assessed that the presented evidence indicated a change of the facts presented in the original Indictment.

16. The Panel further holds that making some factual allegations in the Indictment more precise and concrete does not constitute expanding on the Indictment to the extent that would require it to be submitted for confirmation, as argued by the Defense.

17. With respect to legal qualification of the offense, in the view of the Panel, under the confirmed Indictment the Prosecution charged the Accused with the same criminal offenses indicated in the Amended Indictment, except for adding subparagraph (e) to the charges under Article 173 and Article 31 of the CC of BiH to the existing charges in relation to Nisvet Gasal and Musajb Kukavica.

18. However, the Court is not bound by the legal qualification and this amendment is not of such nature that would lead the Panel to submit the Amended Indictment for

confirmation.

12. Decision refusing the Prosecution and Defense additional evidence

1. On 30 May 2011, the Prosecution filed to the Court the Motion to present additional testimonial evidence in accordance with Article 276 of the Criminal Procedure Code of BiH. In this respect, the Prosecution proposed the examination of the following witnesses: Ivica Kajić, Besim Učambarlić, Zdravko Križanac, Slava Vasilić, Marinko Lučić, Stipo Miloš and Edin Novalić.

2. In the explanation of its Motion the Prosecution submits that the CPC of BiH is not clear on the requirements that have to be met for the parties and the defense counsel to be able to propose evidence in the supplement to the evidentiary proceedings. The Prosecution further submits that the proposed evidence could not be obtained during the investigation. Moreover, the Prosecution is of the view that mere fact that a witness is alive at the time of the investigation, does not in itself preclude the possibility for his/her examination as an additional witness in the supplement to the evidentiary proceedings. If this was the standard then all witnesses who existed at the time of the investigation and filing of the indictment would be prohibited to testify at this stage of the proceedings. Additionally, the Prosecution submits that it is known that one can supplement the evidentiary proceedings in the proceedings before the Court of BiH. Therefore since it is permissible evidence can be adduced at this stage. The intention of the legislator was to make it possible for those witnesses who could not be examined during the investigation, to be heard at the main trial in the supplement to the evidentiary proceedings.

3. Further, the Prosecution is of the view that in this concrete case, one should also take into consideration the number of potential witnesses who could testify in relation to the circumstances with which the Accused are charged, the number of acts charged against the Accused, the duration of these acts, as well as whether the Prosecution, at the time of conducting the investigation, had information that a certain person had been at a certain location and that he/she was in possession of information about the commission of the offense charged against the Accused.

4. The Prosecution further submits that in this concrete case, at the time of the commission of the criminal offense, over 400 persons had the status of detainees and all of them could get the status of witnesses. For this reason, the Prosecution believes that it should first have relevant information that these witnesses were present at the time when the Accused undertook some activities charged against them, and only then conduct an

inquiry to see whether they are available to testify. Moreover, the Prosecution submits that the fact that the Prosecution did not examine every single person who had the status of a detainee at the relevant time, should not be considered as a failure to apply the due diligence standard on their part because, in the view of the Prosecution, it was simply impossible to do it because of the unavailability of witnesses and partly because of the lack of information about their statements. In addition, the Prosecution submits that the CPC of BiH prescribes strict deadlines for filing an indictment in custody cases.

5. Further, the Prosecution submits that the situation with the proposed witnesses, who were members of the Army of BiH, Bugojno SJB or Bugojno Territorial Defense Staff, is somewhat clearer because it is the fact, in the Prosecution's view, that there were thousands of members of these formations at the relevant time and if mere existence of witnesses, that is, the fact that they were alive during the investigation, were taken as a sole criterion, it would mean that the Prosecution, having obtained information about them, could not propose any of the members of these formations in the supplement to the evidentiary proceedings.

6. The Prosecution submits that if such course of action were to be adopted, it would call into question the very purpose of the existence of the supplement to the evidentiary proceedings, which was not the legislator's intention. Moreover, the Prosecution states that due to objective reasons, it has not been able to examine the proposed witnesses and that it has not failed to apply the due diligence standard that would have prevented them from proposing these witnesses at this stage of the proceedings.

7. In its Motion, the Prosecution further contends that it acted in the present proceedings in accordance with the due diligence standard, which is confirmed by the number of witnesses examined during the investigation and the amount of collected documentary evidence. The Prosecution further averred that during the investigation it had no information about the statements of the proposed witnesses, nor did it have information that these witnesses exist and that they are available to them. Additionally, it is stated that the Prosecution will submit to the Court a separate motion for additional documentary evidence.

8. With respect to the availability of the proposed witnesses, the Prosecution stated that the registered place of residence of a large number of witnesses is in Bugojno, but most of them live in other parts of Bosnia and Herzegovina and those who live abroad rarely come to BiH. The Prosecution also submits that it has learned about these witnesses while conducting the investigation in the case of suspect *Dževad Mlaćo et al.*,

which also concerns criminal offenses committed in Bugojno during the same period as in this case.

9. The Prosecution submits that the presentation of additional evidence is required for the purpose of correctly establishing the state of facts. Further, the Prosecution presented portions of their statements for each individual witness and what it intends to prove with that particular evidence.

10. Prosecution also stated that apart from the proposed additional witnesses, it will propose four protected witnesses, as well as expert witnesses and documentary evidence. As a particular reason for acceptance of its motion, the Prosecution states that the Panel has not decided yet on objections to documentary evidence.

11. Finally, the Prosecution moves the Trial Panel to accept its motion to present additional testimonial evidence.

12. On 1 June 2011, Defense for the Accused Senad Dautović responded to the Prosecution's motion to present additional evidence. Defense submits that the witnesses whose examination is proposed in the motion have already been refused by the Panel. Further, Defense for Dautović avers that the statements of potential witnesses are recounted in the submission, which contaminates the evidence. Moreover, the Prosecution evaluates the evidence in its motion, which should be done in the closing arguments.

13. At the hearing held on 15 July 2011, the Prosecution stated that they maintain their motion for presentation of additional evidence and explained in relation to which counts of the Amended Indictment the witnesses proposed in its Motion dated 30 May 2011 would testify. The Prosecution also announced that they plan to examine protected witnesses in relation to the circumstances of takeover of the duty of assistant commander for security by the Accused Senad Dautović and the killing of Mladen Havranek at the Furniture Salon. The Prosecution stated that they abandon the expert witness Fikret Muslimović.

14. In addition, they proposed the examination of two expert witnesses, a graphologist and a forensic medical examiner.

15. With respect to additional documentary evidence, the Prosecution stated that they planned to tender into evidence part of the documentation that was admitted in the case against Enes Handžić and that they needed some time to obtain copies of this evidence.

16. Defense for the first Accused Nisvet Gasal opposed the motion to present additional evidence on the grounds that no new fact witnesses were being proposed. Defense also submits that the Prosecution failed to offer convincing evidence that these

witnesses will testify in relation to some new circumstances. Defense for the first Accused submits that the factual description has been sufficiently clarified and that the examination of the proposed witnesses will not prove anything new. They also stated that should the Court accept the Prosecution's motion, Defense for the first Accused would have a proposal for the presentation of one piece of additional evidence.

17. Defense for the second Accused Musajb Kukavica agreed with submissions made by the Defense for the first Accused and added that apart from arbitrary allegations the Prosecution did not present anything new in their motion to present additional evidence. They also stated that the same facts were being repeated.

18. Defense for the third Accused Senad Dautović stated that they filed submission with the Court and that they stand by this submission. They also announced that they would have a proposal for the presentation of additional evidence, namely the examination of a graphologist in relation to exhibit T-584 and expert witness Fikret Muslimović.

19. The Panel refused the Prosecution and Defense motions to present additional evidence.

20. The Panel holds that the Prosecution's motion is unfounded. The Panel finds that the circumstances in relation to which the proposed witnesses would testify have already been sufficiently clarified in the course of the main trial. Further, the proposed witnesses were available to the Prosecution during the investigation and the Prosecution could have proposed and examined them earlier. The Panel did not accept the Prosecution's averments that they could not know about these witnesses and that they learnt about them while conducting an investigation in another case.

21. The Panel finds that the facts in relation to which the proposed witnesses would testify have been sufficiently clarified during the main trial.

22. The Panel also recalls its earlier decision dated 11 February 2011 refusing the Prosecution's motion to present rebuttal evidence of witnesses Besim Učambarlić, Marinko Lučić, Stipo Miloš, Ivica Kajić, Slava Vasilić and Zdravko Križanac, who were again proposed in the Prosecution's motion to present additional testimonial evidence.

23. Additionally, the fact that a large amount of documentary evidence was adduced and that a large number of witnesses were heard in the case of Nisvet Gasal et al. is not a justification for the fact that the Prosecution did not examine the witnesses for whom it believes that they should be examined during the main trial.

24. The Panel is aware of the complexity of the case, but it is no justification for the fact that the Prosecution proposes the examination of witnesses three years after the

commencement of the main trial to testify about facts that have already been clarified in the course of the main trial.

25. The Panel also refused the motion of the Defense for the third Accused Senad Dautović to examine a graphologist and a military expert.

26. As for the graphologist, the Panel holds that this expert witness could have been examined during the presentation of evidence by the Defense for the Accused Senad Dautović.

27. With respect to the Motion to examine the military expert in relation to the circumstances from the Amended Indictment, the Panel holds that re-examination of this expert witness is not necessary given that he was heard by the Panel, that the parties and the defense counsel were given the opportunity to examine him and that the expert witness prepared the report containing his findings and opinion.

13. Exclusion of the public

1. The Panel excluded the public from some parts of the main trial and proceeded in closed session in accordance with Article 235 of the CPC of BiH on the following occasions: on 5 November 2008, when additional protective measures for Witness A were discussed (testimony from the video link room with voice and image distortion); on 26 November 2008, to discuss protective measures for Witness B (testimony from the video link room with voice and image distortion); on 10 December 2008, the justification of granting additional protective measures to Witness D was discussed (the Panel was informed that Witness D had testified before the ICTY and it was decided to obtain information about protective measures granted to the witness by the ICTY); on 13 October 2010, the reading of the statement of the protected witness was discussed and on 1 December 2010, to have the Panel announce its decision upon the motion to read the statement of witness S.Š.

2. In all the above cases when the public was excluded, having considered the case-law which indicates that it is not always possible to anticipate and fully control the dynamics of presentation on legal and factual issues, the Panel decided to exclude the public from parts of the main trial and proceed in closed session when discussing protective measures to be granted to witnesses in light of the relevant circumstances. Each time when the Court was back in open session, the Panel informed the public about the reasons for proceeding in closed session and about any potential decisions.

3. The Panel made decisions on exclusion of the public from the part of the main trial

in accordance with Article 235 of the Criminal Procedure Code of BiH.

14. On-site visit to the locations

1. In the course of the main trial the Panel decided on 11 June 2008 to conduct on-site visit to the locations as encompassed in the Indictment of the Prosecutor's Office of BiH in order to better follow the testimony of witnesses during the proceedings and in light of the fact that a large number of locations and places are mentioned in the Indictment.
2. The Panel decided that apart from members of the Trial Panel, the on-site visit should be attended by the Prosecutor, all Accused and their defense counsel.

15. Presentation of evidence by the Defense for the fourth Accused before the completion of the defense case of the third Accused

1. At the hearing held on 8 September 2010, the Panel decided to start with presentation of evidence by the Defense for the fourth Accused Senad Dautović before the Defense for the third Accused finished with the presentation of its evidence.
2. After the Defense for the third Accused Enes Handžić adduced most of its evidence, they had only one remaining witness to be summoned. However, his place of residence was not known at the time. Therefore, it was proposed that the Defense for the fourth Accused Senad Dautović start with the presentation of their evidence until such time as the Defense for Enes Handžić informs the Court of a new address of the remaining witnesses. This was stipulated to and agreed with all parties to the proceedings including defense counsel.
3. Convinced that such course of action is in the interest of justice and efficient conduct of the proceedings and that it was decided exclusively in the interest of all the Accused, the Panel decided that the change in the order of presentation of evidence in this concrete case was fully justified.

16. Expiry of the thirty (30) day deadline

1. Article 251(2) of the CPC of BiH stipulates: "The main trial that has been adjourned must recommence from the beginning if the composition of the Panel has changed or if the adjournment lasted longer than 30 days but with consent of the parties and the defense attorney, the Panel may decide that in such a case the witnesses and experts shall not be

examined again and that the new crime scene investigation shall not be conducted but the minutes of the crime scene investigation and testimony of the witnesses and experts given at the prior main trial shall be used.”

2. During the main trial, it happened on several occasions that the adjournment lasted longer than 30 days, but by applying the above provision of the law and with the consent of the parties the Panel decided not to recommence with the main trial from the beginning, but to use the previously adduced evidence once the main trial resumes.

17. Decision of 1 June 2011 refusing the objection to the examination of Enes Handžić as a witness in the case against Nisvet Gasal et al.

1. On 1 June 2011, Defense for the Accused Senad Dautović filed with the Court a procedural objection in relation to the examination of Enes Handžić as a witness. Defense submits that the Prosecution filed with the Court the statement signed by Enes Handžić at the time of his signing of the plea agreement with the Prosecutor's Office of BiH. Defense submits that Enes Handžić was one of the co-Accused in this case. Defense further submits that this statement was submitted to the Court even before the Court ruled on the motion to examine Enes Handžić as a witness.

2. Defense argues that the submission of the witness's statement in this manner is contamination of evidence, especially if one bears in mind the principle of direct presentation of evidence before the Court and that only what witness states at the main trial is to be considered as his testimony except in exceptional circumstances. Defense further argues that the Prosecution could ask for the admission of this statement in the case-file only after the Court had informed itself of the contents of this statement.

3. Moreover, the Defense submits that Enes Handžić attended the testimony of all witnesses in this case and had access to documentary evidence. Defense submits that this type of situation is envisaged in Article 85(1) of the CPC of BiH.

4. At the hearing held on 1 June 2011, Defense for the Accused Dautović reiterated their opposition to the examination of witness Enes Handžić and moved the Court to refuse the motion to examine Enes Handžić.

5. In its response to the Defense objections, the Prosecution stated that Enes Handžić signed the plea agreement in the previous case, that his case was separated from the case against the other Accused and that as a result, the Defense arguments were misplaced.

6. The Panel refused the Motion of the Defense for the Accused Senad Dautović.

7. As part of the plea agreement, the Panel was required to take into consideration Enes Handžić's statement. The Panel holds that in this concrete case the plea agreement was signed and it is true that Enes Handžić was one of the Accused in this case. However, following the signing of the plea agreement the proceedings in relation to Enes Handžić were severed from the proceedings against other Accused in this case. In addition, by signing the plea agreement, Enes Handžić undertook the obligation to testify in this case.

8. As for the submitted statement of Enes Handžić, the Panel notes that it has been disclosed to all the Accused and their defense counsel and everyone had the statement in their possession at the time of direct and cross examination. The fact that the Panel had Enes Handžić's statement prior to his testifying therefore did not prejudice any of the parties to the case.

9. Based on the foregoing, the Panel refused the Motion of the Defense for the accused Senad Dautović, which requested from the Court not to allow the examination of Enes Handžić as a witness in the case against Nisvet Gasal et al.

B. LIST OF THE PROSECUTION EXHIBITS RELATIVE TO THE CASE OF NISVET GASAL AND OTHERS

Exhibit Number	Content of evidence
T1	Record on the examination of witness Gordan Raić dated 21 April 2006, No.162/05
T2	Record on the examination of witness Franjo Vejić dated 15 June 2006, No. KT-RZ-162/05
T3	Record on the examination of witness Miroslav Zelić dated 20 June 2006, No. KT-RZ-162/05
T4	Request for the recognition of the HVO war disabled veteran status for Miroslav Zelić dated 28 March 1997
T5	Medical findings made to the name of Miroslav Zelić dated 23 October 1993
T6	Medical findings to the name of Miroslav Zelić dated 7 November 1993
T7	ICRC certificate issued to the name of Miroslav Zelić dated 27 April 1994
T8	Findings and opinion of the Medical Board in charge of a check-up of persons covered by the Law on the rights of war veterans and members of their families for Miroslav Zelić dated 18 March 2005, No. 1303/04
T9	Findings and opinion of the Medical Board in charge of a check-up of persons covered by the Law on the rights of war veterans and members of their families for Miroslav Zelić in the process of being reviewed since 27 March 2006, No. 835/05
T10	Decision of the Central Bosnia Canton Administration for issues of veterans and disabled persons from the homeland war, No. R-03-41-6654/06 dated 20 March 2006, issued to the name of Miroslav Zelić

T11	Certificate of the Travnik Defense Administration, No. V21-41/1-10-03-219-234/04 dated 3 December 2004
T12	Record on the examination of witness Marko Gunjača dated 14 June 2006, No. KT-RZ-162/05
T13	Record on the examination of witness Ivica Klarić dated 26 June 2006, No. KT-RZ-162/05
T14	Record on the examination of witness Stipica Džapić dated 23 June 2006, No. KT-RZ-162/05
T15	Record on the examination of witness Drago Žulj dated 15 June 2006, No. KT-RZ-162/05
T16	Record on the examination of witness Ivica Topić dated 22 June 2006, No. KT-RZ-162/05
T17	Record on the examination of witness Mario Franjić dated 21 June 2006, No. KT-RZ-162/05
T18	Request for the recognition of the HVO war disabled veteran status for Ivan Kapetanović dated 28 March 1997
T19	Decision of the Central Bosnia Canton Administration for issues of veterans and disabled persons from the homeland war, No. 02-41-10637/06 dated 30.8.2006 issued to the name of Ivan Kapetanović
T20	ICRC certificate issued to the name of Ivan Kapetanović dated 4 April 2000
T21	Record on the examination of witness Ivan Kapetanović dated 9 April 2007, No. KT-RZ-125/07
T22	Record on the examination of witness Milenko Kasalo dated 4 July 2006, No. KT-RZ-162/05
T23	Record on the examination of witness Dragan Boškić dated 7 August 2007, No. KT-RZ-125/07, KT-RZ-162/05, KT-RZ-128/07

T24	Decision of the Municipal Service for General Administration, Social Affairs and Local Communities of the Bugojno municipality, No. 02-41-3-1137/05 dated 13 December 2005 issued to the name of Dragan Boškić
T25	Request for the recognition of the HVO war disabled veteran status for Dragan Boškić dated 28 August 1997
T26	Record on the examination of witness Nikica Marković dated 9 August 2007, No. KT-RZ-125/07, KT-RZ-162/05, KT-RZ-128/07
T27	Request for the recognition of the HVO war disabled veteran status issued to the name of Nikica Marković dated 11 July 1996
T 28	Decision of the Municipal Service for General Administration, Social Affairs and Local Communities of the Bugojno municipality, No. 02-41-3-2849/04 dated 28 November 2005, issued to the name of Nikica Marković
T29	ICRC certificate issued to the name of Nikica Marković dated 16 January 1995
T30	Certificate of the Travnik Defense Administration issued to the name of Nikica Marković, No. V21-41/1-10-03-219-252/04 dated 3 December 2004
T31	Record on the examination of witness Ivo Kujundžić dated 8 August 2007, No. KT-RZ-125/07, KT-RZ-162/05, KT-RZ-128/07
T32	Certificate of the Travnik Defense Administration issued to the name of Ivo Kujundžić, No. V21-41/1-10-03-219-379/04 dated 5 December 2004
T33	ICRC certificate issued to the name of Ivo Kujundžić dated 11 April 1994

T34	Decision of the Municipal service for general administration, social affairs and local community of the Bugojno municipality No.02-41-3-859/05 dated 21 November 2005 issued to the name of Ivo Kujundžić
T35	Request for the recognition of the HVO war disabled veteran status for Ivo Kujundžić dated 1 March 1996
T36	Record on the examination of witness Jadranka Nikolić dated 16 March 2007, No. KT-RZ-162/05
T37	Record on the examination of witness Željko Ištuk dated 30 July 2007, No. KT-RZ-125/07, KT-RZ-162/05
T38a- T38d	Photos
T39	Record on the examination of witness Željko Miloš dated 15 March 2007, No. KT-RZ-162/05
T40	Record on the examination of witness Zijad Salkić dated 10 April 2007, No. KT-RZ-125/07
T41	Record on the examination of witness Mario Glišić dated 29 June 2006, No. KT-RZ-162/05
T42	Record on the examination of witness Ivan Keškić dated 14 August 2007, No. KT-RZ-125/07, KT-RZ-162/05
T43	Record on the examination of witness Jasminka Šečić dated 22 August 2007, No. KT-RZ-125/07, KT-RZ-162/05, KT-RZ-128/07
T44	Record on the examination of witness Josip Lukić dated 9 August 2007, No. KT-RZ-125/07, KT-RZ-162/05, KT-RZ-128/07
T45	Record on the examination of witness Berislav Džalto dated 26 June 2006, No. KT-RZ-162/05
T46	Record on the examination of witness Milenko Begić dated 24 April 2007, No. KT-RZ-125/07, KT-RZ-162/05

T47	Record on the examination of witness Zdravko Kezić dated 24 April 2007, No. KT-RZ-125/07, KT-RZ-162/05
T48	Record on the examination of witness Miroslav Marijanović dated 30 July 2007, No. KT-RZ-125/07, KT-RZ-162/05
T49	Record on the examination of witness Dražan Vučak 30 July 2007, No. KT-RZ-125/07, KT-RZ-162/05
T50	Record on the examination of witness Stipo Vučak dated 30 July 2007, No. KT-RZ-125/07, KT-RZ-162/05
T51	Request for the recognition of the HVO war disabled veteran status for Stipo Vučak dated 4 June 1996
T52	Travnik Defense Administration certificate issued to the name of Stipe Vučak dated 3 December 2004, No. V21-41/1-10-03-219-221/04
T53	Decision of the Municipal Service for General Administration, Social Affairs and Local Community of the Bugojno municipality issued to the name of Stipo Vučak, No. 02-41-3-2796/04 dated 22 November 2005
T54	Findings and opinion of the Medical Board in charge of the examination of persons covered by the Law on the rights of war veterans and members of their families for Stipo Vučak, No. 156/04 dated 8 December 2004
T55	Findings and opinion of the Medical Board in charge of the examination of persons covered by the Law on the rights of war veterans and members of their families for Stipo Vučak, currently being reviewed, dated 3 April 2006, No. 869/05.

T56	Findings and opinion of the Military Disability Board issued to the name of Stipo Vučak dated 21 December 1994, No. 910/94
T57	Record on the examination of witness Zoran Pocrnja dated 30 July 2007, No. KT-RZ-162/05, KT-RZ-125/07
T58	Certificate of the Travnik Defense Administration issued to the name of Zoran Pocrnja, No. V21-41-1-10-03-219-353/04 dated 5 December 2004
T59	Decision of the Municipal Service for General Administration, Social Affairs and Local Communities of the Bugojno municipality issued to the name of Zoran Pocrnja, No. 02-41-3-1107/05 dated 13 January 2006
T60	Record on the examination of witness Mirko Tomljenović dated 13 August 2007, No. KT-RZ-162/05, KT-RZ-125/07
T61	Certificate of the Travnik Defense Administration issued to the name of Mirko Tomljenović, No. V21-41/1-10-03-219-455/04 dated 5 December 2004.
T62	Decision of the Municipal Service for General Administration, Social Affairs and Local Communities of the Bugojno municipality, No. 02-41-3-105/05 dated 21 November 2005
T63	Record on the examination of witness Stjepan Radoš dated 3 April 2007, No. KT-RZ-125/07
T64	Decision of the Municipal Service for General Administration, Social Affairs and Local Communities of the Bugojno municipality issued to name of Stjepan Radoš, broj 02-41-3-1289/05 dated 9 November 2005

T65	Certificate of the Municipal service for general administration issued to the name of Stjepan Radoš dated 5 December 2004, No. V21-41/1-10-03-219-409/04
T66	Record on the examination of witness Bosiljka Kasalo dated 4 July 2006, No. KT-RZ-162/05
T67	Record on the examination of witness Slaven Brajković dated 29 June 2006, No. KT-RZ-162/05
T68	Record on the examination of witness Ilija Udovičić dated 10 September 2007, No. KT-RZ-162/05, KT-RZ-125/07
T69	Record on the examination of witness Alvir Zrinko dated 15 June 2007, No. KT-RZ-125/07
T70	Record on the examination of witness Vlatko Brnas dated 13 August 2007, No. KT-RZ-162/05 and KT-RZ-125/07
T71	Record on the examination of witness Josip Ćubela dated 6 August 2007, No. KT-RZ-128/07, KT-RZ-125/07, KT-RZ-162/05
T72	Record on the examination of witness Ivica Gunjača dated 23 June 2006, No. KT-RZ-162/05
T73	ICRC Certificate dated 26 April 1994 issued to the name of Josip Kalaica
T74	Decision of the Municipal Service for General Administration, Social Affairs and Local Communities, No. 02-41-3-448/05 dated 21 November 2005
T75	Record on the examination of witness Josip Kalaica, No. KT-RZ-162/05, KT-RZ-125/07, KT-RZ-128/07 dated 7 August 2007
T76	Letter Ante Kapetanović
T77	Protocol for identification with two photos

T78	Record on the examination of witness Ante Kapetanović dated 22 May 2007, No. KT-RZ-162/05, KT-RZ-125/07, KT-RZ-105/07
T79	Record on the examination of witness Ivo Mršo dated 21 June 2006, No. KT-RZ-162/05
T 80	Decision of the Municipal service for General Administration, Social affairs and Local Communities dated 20 February 2005, No. 02-41-02-952/05
T81	Record on the examination of witness Slava Gvozden dated 22 May 2007, No. KT-RZ-162/05, KT-RZ-125/07
T82	Copy of a letter from 2003
T83	Copies of letters from 2003
T84	Record on the examination of Witness A
T85	Decision of the Federal Ministry for issues of war veterans and disabled war veterans dated 5 January 2006, No. UP-II-04/1-41-4738/05 for witness A
T86	Record on the examination of witness Dragan Kasalo dated 18 June 2007, No. KT-RZ-125/07, KT-RZ-162/05, KT-RZ-128/07
T87	Record on the examination of witness Sabahudin Gazić dated 11 May 2007, No. KT-RZ-125/05, KT-RZ-162/05
T89	Record on the examination of witness Jozo Tomas dated 7 August 2007, No. KT-RZ-125/07, KT-RZ-162/05, KT-RZ-128/07
T90	Record on the examination of witness Ozren Gvozdenović dated 6 August 2007, No. KT-RZ-125/07, KT-RZ-162/05, KT-RZ-125/07
T91	Record on the examination of witness Ivica Đikić dated 13 August 2007, KT-RZ-162/05, KT-RZ-125/07

T 92	Certificate of the Travnik Defense Administration dated 19 October 2004, No. V21-41/1-10-03-219-113/04 to the name of Živko Ljuban
T93	ID card issued to the name of Živko Ljuban dated 18 October 1959
T94	Record on the examination of witness Živko Ljuban dated 5 October 2007, No. KT-RZ-162/05
T95	Record on the examination of witness Viktor Maros dated 9 August 2007, No. KT-RZ-125/07, KT-RZ-162/05, KT-RZ-128/07
T96	Record on the examination of witness Asim Bahodžić dated 8 October 2007, No. KT-RZ-162/05
T97	Record on the examination of witness D
T98	Record on the examination of witness Berislav Jezidžić dated 25 October 2007, No. KT-RZ-162/08
T 99	Record on the examination of witness Zoran Gvozden dated 25 October 2007, No. KT-RZ-162/05
T100	Record on the examination of witness Janko Ljubos dated 12 December 2005, No. KT-RZ-162/05
T 101	Record on the examination of witness Janko Ljubos dated 15 March 2007, No. KT-RZ-162/05
T 102	Record on the examination of witness Ilija Dujmović dated 18 October 2007, No. KT-RZ-162/05
T103	Record on the examination of witness Tomislav Turalija dated 5 November 2007, No. KT-RZ-162/05
T104	Record on the examination of witness Božo Križanac dated 26 October 2007, No. KT-RZ-162/05
T 105	Record on the examination of witness Damir Kolovrat dated 25 October 2007, No. KT-RZ-162/05

T106	Decision of the Municipal service for general administration, social affairs and local communities dated 16 February 2005, No. 02/3-41-3-2603/04, issued to the name of Damir Grgić
T107	ICRC certificate dated 31 March 1994 issued to the name of Damir Grgić
T108	Decision dated 19 October 2004, No. V21-41/1-10-03-219-139/04 issued to the name of Damir Grgić
T109	Record on the examination of witness Damir Grigić dated 25 October 2007, No. KT-RZ-162/05
T110	Record on the examination of witness Semir Osmić, No. KT-RZ-162/05 dated 22 November 2007
T111	Record on the examination of witness Sead Talić, No. KT-RZ-162/05 dated 28 November 2007
T112	Record on the examination of witness Rade Marijanović, No. KT-RZ-162/05 dated 29 November 2007
T113	Record on the examination of witness Stjepan Cvijanović, No. KT-RZ-162/05 dated 16 October 2007
T114	Record on the examination of witness Nevzudin Kero, No. KT-RZ-162/05 dated 19 November 2007
T115	Record on the examination of witness Zahid Karagić, No. KT-RZ-162/05 dated 22 November 2007
T116	Record on the examination of witness Dragan Nevjestić, No. KT-RZ-162/05 dated 30 October 2007
T117	Record on the examination of witness Bahrija Milanović, No. KT-RZ-162/05 dated 19 November 2007
T118	Record on the examination of witness Admir Slipac, No. KT-RZ-162/05 dated 27 November 2007

T119	Record on the examination of witness Zahid Jusić, No. KT-RZ-162/05 dated 16 November 2007
T120	Record on the examination of witness Nijaz Habib, No. KT-RZ-162/05 dated 15 November 2007
T121	Record on the examination of witness Kazimir Kaić, No. KT-RZ-162/05, KT-RZ-125/07 dated 14 August 2007
T122	Record on the examination of witness Mirsad Velić, No. KT-RZ-162/05 dated 28 November 2007
T123	Record on the examination of witness Suljo Nebić, No. KT-RZ-162/05 dated 19 November 2007
T124	Record on the examination of witness Vinko Pavić, No. KT-RZ-162/05 dated 31 October 2007
T125	ICRC Certificate issued to the name of Vinko Pavić 31 March 1994
T126	Travnik Defense Administration Certificate dated 5 December .2004.
T 127	Record on the examination of witness Jasmin Ivković, No. KT-RZ-162/05 dated 15 November 2007
T128	Record on the examination of witness Bernes Gavranović, number KT-RZ-162/05 dated 12 November 2007
T129	Record on the examination of witness Alen Slipac, No. KT-RZ-162/05 dated 27 November 2007
T130	Record on the examination of witness Željko Lozić, No. KT-RZ-162/05, KT-RZ-125/07 dated 4 September 2007
T131	Statement of witness Tomislav Mikulić dated 15 and 18 September 2001
T132	Statement of witness Mijo Marijanović dated 15 May and 18 September 2001
T133	Statement of witness Marko Krajinović dated 17 January and 9 April 2001

T134	Statement of witness Dragan Keškić dated 10 September 2001 and 27 June 2002
T135	Decision on the Termination of the State of War, Official Gazette, No. 50, 28 December 1995.
T136	Constitution of the Federation of BiH
T137	The Bugojno map
T138	The Donji Vakuf map
T139	The Gornji Vakuf map
T140	Invitation to surrender dated 20 July 1993
T141	Request for hiring prisoners dated 17 October 1993
T142	Order dated 8 March 1993, No. 02/33-628
T143	Regular combat report dated 19 July 1993, No. 02/263-71
T144	Regular combat report dated 26 July 1993, No. 02-263-80
T145	Regular combat report dated 27 July 1993, No. 02-263-83
T146	List of captured HVO prisoners – 104 th Brigade dated 19/20 July 1993, No. 01-151-599/93
T147	List of captured HVO prisoners – 104 th Brigade dated 9 August 1993, No. 01-151-600/93
T148	List of the captured HVO prisoners – 104 th Brigade dated 5 August 1993, No. 01-151-601/93
T149	Regular combat report dated 1 December 1993
T150	Regular combat report dated 30 November 1993
T151	Regular combat report dated 24 September 1993
T152	Daily report dated 17 November 1993
T153	Daily report dated 19 November 1993
T154	Daily report dated 22 November 1993
T155	Daily report dated 30 November 1993
T156	Daily bulletin dated 31 December 1993
T157	Decision of the prison's warden dated 10 March 1994

T158	List of guards dated 8 March 1994
T159	Data on members of the West Operations Group dated 19 January 1994
T160	Receipt dated 11 February 1994
T161	Announcement dated 14 February 1994
T162	Daily report dated 8 January 1994
T163	Daily report dated 9 January 1994
T164	Daily report dated 13 January 1994.
T165	Daily report dated 15 January 1994
T166	Daily report dated 16 January 1994
T167	Daily report dated 17 January 1994
T168	Daily report dated 19 January 1994
T169	Daily report dated 19 March 1994
T170	Daily report dated 19 March 1994
T171-b	Findings issued to the name of Nikica Miloš dated 24 August 1993
T172-a	Application by Franjka Miloš for release from detention
T172	Official Note dated 27 August 1993
T173	Request for hiring prisoners dated 11 March 1994
T174	Letter dated 9 May 1994
T175	List of members of the Bugojno Public Security Station dated 11 August 1993
T176a-s	Documents by the Ministry of Interior, the Bugojno Public Security Station
T177	Decision on the appointment of warden of the temporary prison in Bugojno from 28 July 1993
T178	Draft of the Decision on Allocation of Premises for Temporary Detention of Citizens, Military Personnel sentenced or detained by relevant organs
T179	Meeting on the premises of HQ dated 22 July 1993
T180	Excerpt from the Minutes of 21 st extraordinary session of the Bugojno Municipality War Presidency dated 9 September 1993

T181	Decision on Termination of Employment of Warden for the Temporary Detention Facility in Bugojno dated 10 September 1993
T182	Approval dated 30 September 1993
T183	Order dated 4 October 1993
T184	Order dated 23 October 1993
T185	Order dated 23 October 1993
T186	Order dated 1 December 1993
T187	Order dated 16 November 1993
T188	Announcement 27 July 1993
T189	Information report dated 12 December 1993
T190	Decision issued to the name of Musajb Kukavica dated 18 May 1994.
T191	Decision issued to the name of Nisvet Gasal dated 18 May 1994
T192	Request by the Bugojno Public Security Station dated 21 March 1995
T193	Document file on defense preparedness dated 14 February 1995
T194-a	Letter by the Bugojno Municipal Command Staff dated 12 October 1993 (copy certified by the ICTY)
T194	Letter by the Bugojno Municipal Command Staff dated 12 October 1993
T195	Decision issued to the name of Milica Kovačević dated 22 May 1997
T196	Certificate on the circumstances of killing issued to the name of Perica Kovačević dated 20 May 1997
T197	Decision of the Municipal Service for General Administration, Social Affairs and local communities of the Bugojno Municipality issued to the name of Drago Galić dated 28 October 2005
T198	Certificate of the Travnik Defense Administration dated 23 November 2004

T199	Decision of the Bugojno Municipal Court certifying the death of Zoro Galić dated 5 March 1999
T200	Certificate on the circumstances of killing of Zoro Galić dated 27 June 1997
T201	Certificate of the Travnik Defense Administration issued to the name of Dragan Erkapić 23 November 2004
T202	Decision of the Municipal Service for General Administration, Social Affairs and local communities of the Bugojno Municipality dated 8 December 2006
T203	Decision of the Bugojno Municipal Court proclaiming the death of Dragan Erkapić dated 28 May 2001
T204	Certificate on the circumstances of killing of Dragan Erkapić dated 5 April 1997
T205	Decision of the Municipal Service for General Administration, Social Affairs and local communities of the Bugojno Municipality issued to the name of Dragica Miloš dated 15 May 2006 godine.
T206	Decision of the Bugojno Municipal Court proclaiming the death of Ivo Miloš 29 March 2006
T207	Certificate of the Travnik Defense Administration issued to the name of Ivo Miloš dated 21 April 2006
T208	Certificate on the circumstances of killing issued to the name of Ivo Miloš 30 January 1998
T209	Decision of the Municipal Service for General Administration, Social Affairs and local communities of the Bugojno Municipality issued to the name of Jozo Miličević 22 January 2007
T210	Certificate of the Travnik Defense Administration issued to the name Dragan Miličević dated 29 December 2006

T211	Decision of the Bugojno Municipal Court proclaiming the death of Dragan Miličević dated 7 February 2006
T212	Certificate on the circumstances of killing issued to the name of Dragan Miličević 30 January 1998
T213	Decision of the Bugojno Defense Administration issued to the name of Pavo Markulj dated 16 April 2007
T214	Certificate of the Travnik Defense Administration issued to the name of Anto Markulj dated 23 November 2004
T215	Certificate on the circumstances of killing issued to the name of Anto Markulj 20 February 1997
T216	Certificate of the Travnik Defense Administration issued to the name of Zdravko Juričić 23 November 2004
T217	Decision of the Municipal Service for General Administration, Social Affairs and local communities of the Bugojno Municipality issued to the name of Olgica Juričić 29 April 2005
T 218	Decision on correction by the Bugojno Municipal Court dated 9 November 2005
T219	Decision by the Bugojno Municipal Court proclaiming the death of Zdravko Juričić 20 December 2002
T220	Certificate on the circumstances of killing issued to the name of Zdravko Juričić 25 February 1997
T221	Certificate of the Travnik Defense Administration issued to the name of Miroslav Dilber dated 23 November 2004
T222	Decision of the Bugojno Defense Administration issued to the name of Ljuba Dilber dated 16 March 1998

T223	Decision of the FBiH Defense Ministry dated 3 September 1998
T224	Certificate on the circumstances of killing issued to the name of Miroslav Dilber dated 30 January 1998
T225	Certificate of the Travnik Defense Administration issued to the name of Branko Crnjak 23 November 2004
T226	Decision by the Bugojno Municipal Court proclaiming the death of Perica Crnjak 10 May 2006
T227	Decision on correction by the Bugojno Municipal Court dated 28 June 2006
T228	Conclusion by the Municipal Service for General Administration, Social Affairs and local communities of the Bugojno dated 20 September 2005.
T229	Decision of the Municipal Service for General Administration, Social Affairs and local communities of the Bugojno Municipality issued to the name of Ankica Crnjak dated 22 June 2006
T230	Certificate of the Travnik Defense Administration issued to the name of Zvonimir Crnjak dated 8 June 2006
T231	Decision of the Municipal Service for General Administration, Social Affairs and local communities of the Bugojno Municipality dated 24 September 2005
T232	Certificate on the circumstances of killing of Perica Crnjak dated 13 March 1997
T233	Decision of the Municipal Service for General Administration, Social Affairs and local communities of the Bugojno Municipality issued to the name of Mara Džaja dated 29 February 2005
T234	Certificate of the Travnik Defense Administration issued to the name of Niko Džaja dated 23 November 2004

T235	Decision by the Bugojno Municipal Court proclaiming the death of Niko Džaja dated 31 March 2005
T236	Certificate on the circumstances of killing of Niko Džaja dated 5 April 1997
T237	Decision of the Municipal Service for General Administration, Social Affairs and local communities of the Bugojno Municipality issued to name of Franjka Miloš dated 14 January 2005
T238	Certificate of the Travnik Defense Administration issued to the name of Nikica Miloš dated 23 November 2004
T239	Decision by the Bugojno Municipal Court proclaiming the death of Nikica Miloš dated 31 December 2004
T240	Certificate on the circumstances of killing of Nikica Miloš dated 4 November 1996
T241	Certificate of the Travnik Defense Administration issued to the name of Frano Jezidžić 23 November 2004
T242	
T243	Decision by the Bugojno Municipal Court proclaiming the death of Frano Jezidžić dated 6 February 2000
T244	Decision on the correction of the Bugojno Municipal Court dated 31 October 2005
T245	Certificate on the circumstances of killing of Franjo Jezidžić 5 April 1997
T246	Decision of the Municipal Service for General Administration, Social Affairs and local communities of the Bugojno Municipality issued to name of Melanka Zelić dated 14 January 2005

T247	Certificate of the Travnik Defense Administration issued to the name of Stipe Zelić dated 23 November 2004
T248	Decision by the Bugojno Municipal Court proclaiming the death of Stipica Zelić dated 20 January 2003
T249	Decision on correction by the Bugojno Municipal Court dated 29 November 2005
T250	Certificate on the circumstances of killing of Stipica Zelić dated 13 February 1997
T251	Decision by the Bugojno Defense Administration issued to the name of Sjepan Strujić dated 20 March 1997
T252	Certificate by the Travnik Defense Administration dated 23 November 2004 issued to the name of Mihovil Strujić
T253	Certificate on circumstances of killing of Mihovil Strujić dated 5 April 1997
T254	Certificate on circumstances of killing of Zdenko Batarilo dated 16 February 1996
T255	Certificate of the Travnik Defense Administration issued to the name of Zdenko Batarilo dated 19 October 2004
T256	Decision of the Municipal Service for General Administration, Social Affairs and local communities of the Bugojno Municipality issued to name Zdenko Batarilo dated 9 December 2005
T257	Findings and opinion of the medical board issued to the name of Zdenko Batarilo dated 6 December 2004
T258	Findings and opinion of the medical board in the course of the revision procedure issued to the name of Zdenko Batarilo dated 15 March 2006

T259	Decision by the Cantonal Administration for the Issues of War Veterans and Disabled War Veterans issued to the name of Mario Bodrušić dated 27 June 2006
T260	Findings and opinion of the Medical Board in the revision procedure issued to the name of Mario Bodrušić dated 19 June 2006.
T261	Findings and opinion of the medical board issued to the name of Mario Bodrušić dated 17 March 2005
T262	Certificate of the Travnik Defense Administration issued to the name of Mario Bodrušić dated 5 October 2004
T263	Decision of the Municipal Service for General Administration, Social Affairs and local communities of the Bugojno Municipality issued to the name of Mario Bodrušić dated 16 January 2006
T264	Decision of the Municipal Service for General Administration, Social Affairs and local communities of the Bugojno Municipality issued to the name of Robert Bodrušić 27 November 2005
T265	Findings and opinion of the Medical Board in the revision procedure issued to the name of Robert Bodrušić dated 21 June 2006
T266	Travnik Defense Administration Certificate issued to the name of Robert Bodrušić dated 5 October 2004
T267	Findings and opinion of the Military Disability Board issued to the name of Robert Bodrušić dated 24 January 2003
T268	Certificate of the Travnik Defense Administration issued to the name of Slavko Brkanović dated 5 October 2004
T269	Findings and opinion of the Medical Board issued to the name of Slavko Brkanović dated 18 March 2005

T270	Findings and opinion of the Medical Board in the revision procedure issued to the name of Slavko Brkanović dated 4 May 2005
T271	Decision of the Municipal Service for General Administration, Social Affairs and local communities of the Bugojno Municipality issued to the name of Slavko Brkanović dated 13 December 2005
T272	ICRC certificate issued to the name of Slavko Brkanović dated 2 May 1994
T273	Travnik Defense Administration Certificate issued to the name of Vlado Brnada dated 5 October 2004
T274	Findings and opinion of the Medical Board in the revision procedure issued to the name of Vlado Brnada dated 15 March 2004
T275	Decision of the Municipal Service for General Administration, Social Affairs and local communities of the Bugojno Municipality issued to the name of Vlado Brnada dated 9 December 2006
T276	Findings and opinion of the Medical Board issued to the name of Vlado Brnada dated 1 December 2004
T277	ICRC Certificate issued to the name of ICRC dated 13 June 1995
T278	Decision of the Municipal Service for General Administration, Social Affairs and local communities of the Bugojno Municipality issued to the name of Tomislav Knežević 20 December 2005
T279	Findings and opinion of the Medical Board in the revision procedure issued to the name of Tomislav Knežević dated 21 June 2006
T280	Findings and opinion of the Medical Board issued to the name of Tomislav Knežević dated 29 June 2005
T281	ICRC certificate issued to the name of Tomislav Knežević dated 27 April 1994

T282	Certificate of the Travnik Defense Administration dated 5 December 2004 issued to the name of Tomislav Knežević
T283	Decision of the Municipal Service for General Administration, Social Affairs and local communities of the Bugojno Municipality issued to the name of Zdravko Ljubas dated 22 June 2006
T284	Certificate of the Travnik Defense Administration issued to the name of Zdravko Ljubas dated 5 December 2004
T285	Findings and opinion of the Medical Board dated 19 June 2006
T286	Findings and opinion of the Medical Board in the revision issued to the name of Zdravko Ljubas dated 4 September 2006
T287	Findings and opinion of the Medical Board issued to the name of Zdravko Ljubas dated 14 February 2005
T288	Findings and opinion of the Medical Board issued to the name of Zdravko Ljubas dated 30 November 1994.
T289	ICRC certificate issued to the name of Zdravko Ljubas dated 28 December 1994
T290	Decision of the Municipal Service for General Administration, Social Affairs and local communities of the Bugojno Municipality issued to the name of Mario Lozić dated 21 November 2005
T291	Findings and opinion of the Medical Board issued to the name of Mario Lozić dated 4 January 2005
T292	Certificate of the Travnik Defense Administration issued to the name of Mario Lozić dated 5 December 2004

T293	Findings and opinion of the Medical Board in the revision procedure issued to the name of Mario Lozić dated 3 April 2006
T294	Findings and opinion of the Medical Board issued to the name of Mario Lozić dated 7 December 1994
T295	Decision of the Municipal Service for General Administration, Social Affairs and local communities of the Bugojno Municipality issued to the name Hrvoje Lučić dated 21 November 2005
T296	Certificate of the Travnik Defense Administration issued to the name of Hrvoje Lučić dated 5 December 2004
T297	Findings and opinion of the Medical Board issued to the name of Hrvoje Lučić dated 7 February 2005
T298	Findings and opinion of the Medical Board in the revision procedure issued to the name of Hrvoje Lučić dated 4 April 2006
T299	ID card No. 368923 issued to the name of Hrvoje Lučić
T300	Decision of the Cantonal Administration for the issues of war veterans and disabled war veterans issued to the name of Stipan Maros dated 24 April 2006
T301	Findings and opinion of the Medical Board issued to the name of Stipan Maros dated 4 April 2006
T302	Certificate of the Travnik Defense Administration issued to the name of Stipan Maros dated 5 December 2004
T303	ICRC certificate issued to the name of Stipan Maros dated 27 April 1994
T304	Decision of the Municipal Service for General Administration, Social Affairs and local communities of the Bugojno Municipality issued to the name of Marko Mioč dated 9 December 2005.

T305	Certificate of the Travnik Defense Administration issued to the name of Marko Mioč dated 23 December 2004
T306	Findings and opinion of the Medical Board issued to the name of Marko Mioč dated 16 March 2005.
T307	Findings and opinion of the Medical Board issued to the name of Marko Mioč dated 21 December 1994.
T308	Findings and opinion of the Medical Board in the revision procedure issued to the name of Anto Pocrnja dated 8 June 2006
T309	Decision of the Municipal Service for General Administration, Social Affairs and local communities of the Bugojno Municipality issued to the name of Anto Pocrnja od 9 December 2005
T310	Findings and opinion of the medical board issued to the name of Anto Pocrnja dated 17 March 2005
T311	Certificate of the Travnik Defense Administration issued to the name of Anto Pocrnja dated 23 December 2004
T312	Findings and opinion of the medical military disability board issued to the name of Anto Pocrnja dated 21 December 1994
T313	Findings and opinion of the medical board issued to the name of Josip Pocrnja dated 14 December 2004
T314	Decision of the Municipal Service for General Administration, Social Affairs and local communities of the Bugojno Municipality issued to the name of Josip Pocrnja 8 November 2005
T315	Findings and opinion of the medical board in the revision procedure issued to the name of Josip Pocrnja dated 27 March 2006.

T316	Certificate of the Travnik Defense Administration issued to the name of Josip Pocrnja dated 5 December 2004
T317	Decision of the Municipal Service for General Administration, Social Affairs and local communities of the Bugojno Municipality issued to the name of Josip Rupnik dated 9 December 2005
T318	Certificate of the Travnik Defense Administration issued to the name of Josip Rupnik dated 5 December 2004
T319	Findings and opinion of the medical board in the revision procedure issued to the name of Josip Rupnik dated 27 March 2006
T320	Findings and opinion of the medical board issued to the name of Josip Rupnik dated 18 March 2005
T321	Excerpt from Protocol of the war hospital "Rama" dated 20 March 2003
T322	Certificate on circumstances of killing of Josip Rupnik dated 7 June 1996.
T323	Findings and opinion of the medical board in the revision procedure issued to the name of Ivica Rupnik dated 18 January 1995.
T324	Certificate of the Travnik Defense Administration issued to the name of Darko Renjić dated 3 December 2004
T325	Decision of the Municipal Service for General Administration, Social Affairs and local communities of the Bugojno Municipality issued to the name of Darko Renjić dated 21 November 2005
T326	Findings and opinion of the medical board in the revision procedure issued to the name of Darko Renjić dated 4 April 2006
T327	Findings and opinion of the medical board issued to the name of Darko Renjić dated 12 January 2005

T328	Findings and opinion of the medical board issued to the name of Damir Šakić dated 6 December 2004
T329	Findings and opinion of the medical board in the revision procedure issued to the name of Damir Šakić dated 21 April 2006.
T330	Decision of the Cantonal Administration for issues of war veterans and disabled war veterans issued to the name of Damir Šakić dated 28 June 2006
T331	Certificate of the Travnik Defense Administration issued to the name of Damir Šakić dated 3 December 2004
T332	Decision of the Municipal Service for General Administration, Social Affairs and local communities of the Bugojno Municipality issued to the name of Damir Šakić dated 25 March 2005
T333	ICRC certificate dated 26 April 1994 issued to the name of Damir Šakić
T334	Excerpt from the war hospital "Rama" issued to the name of Damir Šakić dated 13 April 1994
T335	Decision of the Municipal Service for General Administration, Social Affairs and local communities of the Bugojno Municipality issued to the name of Marko Vukadin dated 9 December 2005
T336	Decision of the Cantonal Administration for issued of war veterans and disabled war veterans issued to the name of Marko Vukadin dated 25 May 2006
T337	Findings and opinion of the Cantonal Administration for issues of war veterans and disabled war veterans issued to the name of Marko Vukadin dated 9 May 2006
T338	Findings and opinion of the medical board issued to the name of Marko Vukadin dated 14 March 2005

T339	Certificate of the Travnik Defense Administration issued to the name of Marko Vukadin dated 23 December 2004
T340	ICRC certificate issued to the name of Marko Vukadin dated 22 December 2003
T341	Excerpt from the protocol of the war hospital "Rama" issued to the name of Marko Vukadin dated 10 June 2004
T342	Decision of the Municipal Service for General Administration, Social Affairs and local communities of the Bugojno Municipality issued to the name of Anto Vukadin dated 13 December 2005
T343	Decision of the Cantonal Administration of war veterans and disabled war veterans issued to the name of Anto Vukadin dated 14 July 2006
T344	Findings and opinion of the medical board issued to the name of AntoVukadin dated 16 March 2005
T345	Findings and opinion of the medical board in the revision procedure issued to the name of Anto Vukadin dated 23 May 2006
T346	Certificate of the Travnik Defense Administration issued to the name of Anto Vukadin dated 5 December 2004
T347	ICRC certificate issued to the name of Anto Vukadin dated 31 March 1994
T348	Findings and opinion of psychologist issued to the name of Anto Vukadin dated 17 October 1997
T349	Excerpt from the protocol of the war hospital "Rama" issued to the name of Anto Vukadin dated 10 April 1994
T350	Findings and opinion of the medical board for disabled war veterans issued to the name of Stipo Vukadin dated 30 November 1994

T351	Decision of the Municipal Service for General Administration, Social Affairs and local communities of the Bugojno Municipality issued to the name of Branko Dalić dated 23 November 2005.
T352	Defense Travnik Administration certificate issued to the name of Branko Dalić dated 5 October 2004
T353	Findings and opinion of the medical board in the revision procedure issued to the name of Branko Dalić dated 13 March 2006
T354	ICRC certificate issued to the name of Branko Dalić dated 26 April 1994
T355	Decision of the Municipal Service for General Administration, Social Affairs and local communities of the Bugojno Municipality issued to the name of Vinko Filipović dated 22 November 2005
T356	Findings and opinion of the medical board in the revision procedure issued to the name of Vinko Filipović dated 3 April 2006
T357	Travnik Defense Administration certificate issued to the name of Vinko Filipović dated 5 October 2004
T358	ICRC certificate issued to the name of Damir Ivić dated 1 September 1994
T359	Travnik Defense Administration issued to the name of Damir Ivić dated 5 December 2004
T360	Findings and opinion of the medical board in the revision procedure issued to the name of Damir Ivić dated 3 April 2006
T361	Decision of the Municipal Service for General Administration, Social Affairs and local communities of the Bugojno Municipality issued to the name of Damir Ivić dated 22 November 2005

T362	Decision of the Municipal Service for General Administration, Social Affairs and local communities of the Bugojno Municipality issued to the name of Zvonko Cvijanović dated 22 November 2005
T363	Findings and opinion of the medical board in the revision procedure issued to the name of Zvonko Cvijanović dated 27 March 2006
T364	Findings and opinion of the medical board issued to the name of Zvonko Cvijanović dated 13 December 2004
T365	Proposal for expert witness analysis for Zvonko Cvijanović dated 2 May 1996
T366	Findings and opinion of the medical board issued to the name of Pero Ivandić dated 9 February 2005
T367	Findings and opinion of the medical board in the revision procedure issued to the name of Pero Ivandić dated 4 April 2006
T368	Decision of the Municipal Service for General Administration, Social Affairs and local communities of the Bugojno Municipality issued to the name of Pero Ivandić dated 21 November 2005
T369	Travnik Defense Administration certificate dated 5 December 2004 issued to the name of Pero Ivandić
T370	ICRC certificate issued to the name of Pero Ivandić dated 31 March 1994
T371	Travnik Defense Administration certificate issued to the name of Dejan Bilušić dated 5 October 2004
T372	Findings and opinion of the medical board in the revision procedure issued to the name of Dejan Bilušić dated 6 April 2006
T373	Findings and opinion of the medical board issued to the name of Dejan Bilušić dated 17 March 2005

T374	Findings and opinion of the second instance medical board issued to the name of Dejan Bilušić dated 18 February 2000
T375	Decision of the Municipal Service for General Administration, Social Affairs and local communities of the Bugojno Municipality issued to the name of Dejan Bilušić dated 13 January 2005
T376	Statement of witness Ankica Crnjak dated 5 October 2005 given before the ICTY
T377	Statement of witness Milica Crnjak Alešić dated 4 October 2005 given before the ICTY
T378	Statement of witness Malenka Zelić dated 11 April 2009 given before the ICTY
T379	Statement of witness Paulina Subašić dated 9 February 2006 given before the ICTY
T380	Statement of witness Dijana Strujić dated 6 October 2005 given before the ICTY
T381	Statement of witness Slavka Miloš dated 8 February 2006 given before the ICTY
T382	Statement of witness Dragica Miloš dated 9 February 2006 given before the ICTY
T383	Statement of witness Mario Jezidžić dated 17 September 2005 given before the ICTY
T384	Statement of witness Mara Džaja dated 16 February 2006 given before the ICTY
T385	Decision of the Municipal Service for General Administration of the Bugojno municipality issued to the name of Ranko Domaćinović dated 28 November 2005
T386	Travnik Defense Administration certificate, Bugojno Municipality issued to the name of Ranko Domaćinović dated 5 October 2004

T387	Findings and opinion of the medical board in the revision procedure issued to the name of Ranko Domaćinović dated 1 August 2006
T388	Findings and opinion of the medical board issued to the name of Ranko Domaćinović dated 14 December 2004
T389	Certificate issued by <i>Republika Herceg Bosna</i> , Bugojno Red Cross issued to the name of Ranko Domaćinović dated 29 March 1994
T390	Decision of the Cantonal Administration for war veterans issues of the Central Bosnia Canton issued to the name of Vlatko Brnas dated 27 October 2006
T391	Findings and opinion of the medical board in the revision procedure issued to the name of Vlatko Brnas dated 3 April 2006
T392	Travnik Defense Administration certificate issued to the name of Vlatko Brnas dated 5 October 2004
T393	Findings and opinion of the medical board dated 9 December 2004 issued to the name of Vlatko Brnas
T394	Findings and opinion of the military medical board for war disabled veterans of <i>Republika Herceg Bosna</i> issued to the name of Vlatko Brnas dated 7 December 1994
T395	Proposal for medical expert witness analysis issued to the name of Vlatko Brnas dated 16 December 1996
T396	Travnik Defense Administration certificate issued to the name of Josip Lukić dated 5 December 2004
T397	Findings and opinion of the medical board issued to the name of Josip Lukić dated 9 February 2005
T398	Decision of the Municipal Service for General Administration of the Bugojno municipality issued to the name of Josip Lukić dated 21 November 2005

T399	Findings and opinion of the medical board in the revision procedure issued to the name of Josip Lukić dated 8 May 2006
T400	Findings and opinion of the military medical board issued to the name of Josip Lukić dated 30 November 1994
T401	ICRC certificate issued to the name of Josip Lukić dated 28 September 1993.
T402	Decision of the Municipal Service for General Administration of the Bugojno municipality issued to the name of Mladen Šistov dated 9 December 2005
T403	Findings and opinion of the medical board issued to the name of Mladen Šistov dated 7 December 2004
T404	Travnik Defense Administration certificate issued to the name of Mladen Šistov dated 3 December 2004
T405	Findings and opinion of the medical board in the revision procedure issued to the name of Mladen Šistov dated 27 March 2006.
T406	ICRC certificate issued to the name of Mladen Šistov dated 28 September 1993
T407	Decision of the Federal Ministry for War Veterans and Disabled War Veterans issued to the name of Željko Sajlović dated 5 January 2006
T408	Findings and opinion of the medical board issued to the name of Željko Sajlović dated 8 December 2004
T409	Findings and opinion of the medical board issued to the name of Željko Sajlović dated 15 December 2005
T410	Travnik Defense Administration certificate issued to the name of Željko Sajlović dated 5 December 2004
T411	Decision of the Municipal Service for General Administration of the Bugojno municipality issued to the name of Miroslav Visković dated 24 February 2005

T412	Findings and opinion of the medical board in the revision procedure issued to the name of Miroslav Visković dated 31 May 2006
T413	Findings and opinion of the medical board issued to the name of Miroslav Visković dated 1 December 2004
T414	Decision of the Cantonal Administration for issues of war veterans of the Central Bosnia Canton issued to the name of Miroslav Visković dated 17 July 2006
T415	Travnik Defense Administration decision issued to the name of Miroslav Visković dated 23 November 2004
T416	Findings and opinion of the military medical board issued to the name of Miroslav Visković dated 7 December 1994
T417	Decision of the Municipal Service for General Administration of the Bugojno municipality issued to the name of Zoran Pejak dated 9 December 2005
T418	Findings and opinion of the medical board issued to the name of Zoran Pejak dated 2 December 2004
T419	Travnik Defense Administration certificate issued to the name of Zoran Pejak dated 23 November 2004
T420	Findings and opinion of the medical board in the revision procedure issued to the name of Zoran Pejak dated 20 June 2006
T421	Findings and opinion of the military medical board of <i>Croat Republic Herceg Bosna</i> issued to the name of Zoran Pejak dated 21 December 1994
T422	ICRC certificate issued to the name of Zoran Pejak dated 27 April 1994
T423	Decision of the Municipal Service for General Administration of the Bugojno municipality issued to the name of Dragan Keškić dated 9 December 2005

T424	Travnik Defense Administration certificate issued to the name of Dragan Keškić dated 5 December 2004
T425	Findings and opinion of the medical board issued to the name of Dragan Keškić dated 18 March 2005
T426	Findings and opinion of the medical board in the revision procedure issued to the name of Dragan Keškić dated 27 March 2006
T427	ICRC certificate issued to the name of Dragan Keškić dated 2 May 1994
T428	Decision of the Municipal Service for General Administration of the Bugojno municipality issued to the name of Josip Šimić dated 22 November 2005
T429	Findings and opinion of the medical board issued in the revision procedure issued to the name of Josip Šimić dated 17 July 2006
T 430	Travnik Defense Administration certificate issued to the name of Josip Šimić dated 5 December 2004
T431	Findings and opinion of the medical board issued to the name of Josip Šimić dated 17 December 2004
T432	ICRC certificate issued to the name of Josip Šimić dated 27 April 1994
T433	Certificate on the circumstances of killing issued to the name of Josip Šimić dated 8 May 1996
T434	Findings and opinion of the military disability board of the Croat Republic of Herceg Bosna issued to the name of Josip Šimić dated 30 November 1994
T435	Decision of the Municipal Service for General Administration of the Bugojno municipality issued to the name of Mario Miloš dated 14 December 2005
T436	Travnik Defense Administration certificate issued to the name of Mario Miloš dated 5 December 2004

T437	Findings and opinion of the medical board in the revision procedure issued to the name of Mario Miloš dated 8 June 2006
T438	Findings and opinion of the medical board issued to the name of Mario Miloš dated 14 July 2005
T439	Findings and opinion of the military disability board of the <i>Croat Republic Herceg Bosna</i> issued to the name of Mario Miloš dated 30 November 1994
T440	ICRC certificate issued to the name of Mario Miloš dated 31 March 1994
T441	Decision of the Municipal Service for General Administration of the Bugojno municipality issued to the name of Dražen Kelava dated 22 November 2005
T442	Travnik Defense Administration certificate issued to the name of Dražen Kelava dated 23 December 2004
T443	Findings and opinion of the medical board issued to the name of Dražen Kelava dated 17 February 2005
T444	Decision of the Municipal Service for General Administration of the Bugojno municipality issued to the name of Ivica Vukadin dated 13 January 2006
T445	Decision of the Cantonal Administration for issues of war veterans and disabled war veterans issued to the name of Ivica Vukadin dated 21 June 2006
T446	Findings and opinion of the medical board in the revision procedure issued to the name of Ivica Vukadin dated 27 March 2006
T447	Travnik Defense Administration certificate issued to the name of Ivica Vukadin dated 5 December 2004
T448	Findings and opinion of the medical board issued to the name of Ivica Vukadin dated 16 March 2005

T449	ICRC certificate issued to the name of Ivica Vukadin dated 31 March 1994
T450	Excerpt from the protocol of the War Hospital „Rama“ issued to the name of Ivica Vukadin dated 10 April 1994
T451	Findings and opinion of the medical board issued to the name of Ivo Lozančić dated 7 February 2005
T452	Decision of the Municipal Service for General Administration of the Bugojno municipality issued to the name of Ivica Vukadin dated 21 November 2005
T453	Findings and opinion of the medical board in the revision procedure issued to the name of Ivo Lozančić dated 3 April 2006
T454	Travnik Defense Administration certificate issued to the name of Ivo Lozančić dated 19 October 2004
T455	Decision of the Municipal Service for General Administration of the Bugojno municipality issued to the name of Miroslav Karlić dated 14 December 2005.
T456	Findings and opinion of the medical board in the revision procedure issued to the name of Miroslav Karlić dated 21 June 2006
T457	Travnik Defense Administration certificate issued to the name of Miroslav Karlić dated 5 December 2004
T458	Findings and opinion of the medical board issued to the name of Miroslav Karlić dated 4 July 2005
T459	Decision of the Municipal Service for General Administration of the Bugojno municipality issued to the name of Ozren Gvozdrenović dated 22 November 2005

T460	Findings and opinion of the medical board in the revision procedure issued to the name of Ozren Gvozdrenović dated 13 March 2006
T461	Travnik Defense Administration certificate issued to the name of Ozren Gvozdrenović dated 3 December 2004
T462	Certificate on the circumstances of killing of Ozren Gvozdrenović dated 29 July 1997
T463	ICRC certificate dated 11 April 1994 issued to the name of Ozren Gvozdrenović
T464	Decision on the proclamation of the state of war
T465	Dispatch note by Fadil Jaganjac dated 3 June 1994
T466	Dispatch note by the Security Department of the Command of the 7 th Corps dated 3 June 1994
T467	Dispatch note of the Security Department of the Command of 3 rd Corps dated 9 June 1994
T468	Dispatch note on the arrest of Frano Jezidžić dated 28 May 1994
T469	Dispatch note of the Security Department of the Command of 7 th Corps dated 28 May 1994
T470	Statement of Musajb Kukavica dated 8 March 1994
T471	Report of the Security Organ of the Command of 307 th Motorized Brigade dated 17 July 1993
T472	Report of the Security Organ of the 307 th Motorized Brigade dated 13 September 1993
T473	Report of the Security Organ of 307 th Motorized Brigade dated 13 September 1993
T474	Dispatch note of the Security Organ of the 307 th Motorized Brigade dated 8 October 1993
T475	Official note by Ahmed Hadžić dated 5 October 1993
T476	Official note by Ahmed Hadžić dated 5 October 1993
T477	Military police combat report dated 10 August 1993

T478	Order of the Command of the 3 rd Corps dated 22 April 1993
T479	Dispatch note of the Command of the 3 rd Corps dated 14 June 1993
T480	Regular operations report dated 10 July 1993
T481	Daily operations report of the command of the West Operations Group dated 18 July 1993
T482	Interim report of the Command of the West Operations Group dated 18 July 1993
T483	Interim operations report of the Command of the West Operations Group dated 20 July 1993
T484	Interim operations report of the command of the West Operations Group dated 20 July 1993
T485	Operations report of the command of the West Operations Group dated 20 July 1993
T486	Daily operations report of the West Operations Group dated 21 July 1993
T487	Daily operations report of the West Operations Group dated 22 July 1993
T488	Regular operations report of the command of the West Operations Group dated 22 July 1993
T489	Daily operations report of the command of the West Operations Group dated 23 July 1993
T490	Daily operations report of the command of the West Operations Group dated 24 July 1993
T491	Battlefield situation report dated 25 July 1993
T492	Interim report of the command of the West Operations Group dated 26 July 1993
T493	Interim report of the West Operations Group dated 27 July 1993
T494	Regular operations report of the West Operations Group dated 27 July 1993
T495	Regular combat report of the command of the Bugojno municipality dated 18 July 1993

T496	Regular combat report of the command of the West Operations Group 29 July 1993
T497	Regular combat report of the defense command of the Bugojno municipality dated 10 September 1993
T498	Visit to the detained soldiers dated 14 September 1993
T499	Report on the negotiations with HVO dated 14 October 1993
T500	Appointment Proposal dated 21 February 1993
T501	Order dated 4 October 1993
T502	Agreement dated 21 March 1994
T503	Letter of the prison warden Nisvet Gasal dated 20 November 1993
T504	Proposal for the establishment of the command of the West Operations Group dated 27 November 1993
T505	Announcement by the prison warden Nisvet Gasal dated 17 December 1993
T506	Submission of the data on armament dated 8 February 1994
T507	Appointment proposal 16 January 1994
T508	Daily report dated 12 January 1994
T509	Authorization to visit a detainee dated 23 January 1993.
T510	Order of the Command of the West Operations Group dated 11 September 1993
T511	List of members of the West Operations Group Communication Platoon dated 5 February 1994
T512	List of members of the West Operations Group Communication Platoon dated 4 March 1994
T513	Daily bulletin dated 25 July 1993
T514	Order of Senad Dautović dated 26 July 1999
T515	Interim report dated 19 September 1993

T516	Submission of the information on captured Ustashas dated 3 January 1994
T517	Implementation of the joint declaration dated 14 October 1993
T518	Verification request dated 20 April 1994
T519	Special information dated 20 August 1993
T520	Outline of the captured civilians dated 1 August 1993
T521	Outline of the captured members of the Bugojno HVO HQ dated 1 August 1993
T522	Outline of the captured members of the HVO units dated 6 September 1993
T523	Request for the submission of data dated 2 May 1994
T524	Letter of the Ministry of Justice dated 6 May 1994
T525	Announcement on change of <i>R/R /Transl. note: wartime assignment/</i> dated 31 March 1994
T526	Military records for Gasal Nisvet
T527	Photos tendered into the case file on 7 October 2009
T528	Certificate issued to the name of Musajb Kukavica dated 21 September 1991
T529	Military records for Musajb Kukavica
T530	Travnik Defense Administration certificate issued to the name of Musajb Kukavica dated 20 March 2006
T531	Travnik Defense Administration decision issued to the name of Musajb Kukavica dated 10 March 2006
T532	Record on the opening and review of the temporarily seized items and documents dated 29 March 2007
T533	Record on the opening and review of the temporarily seized items and documents dated 29 March 2007
T534	Military Department Personal file of Nisvet Gasal

T535	Unit Personal File of Nisvet Gasal
T536	Military Department Personal file of Musajb Kukavica
T537	Unit Personal File of Musajb Kukavica
T538	Data from the criminal records concerning Nisvet Gasal 13 August 2007
T539	Excerpt from the criminal records dated 7 August 2007
T540	Order of the Defense Command Staff dated 24 July 1993
T541	Appointment proposal dated 9 November 1992
T542	Proposal to the War Presidency and Executive Board of the Bugojno Municipal Assembly dated 15 September 1993
T543	Letter on needed objects dated 11 March 1993
T544	Authorization to carry out police related tasks towards members of the Bugojno staff command dated 9 August 1993
T545	Daily report dated 5 March 1993
T546	Request sent to the command of the West Operations Group dated 29 May 1993
T547	Report of the Security Organ of the 307 th Motorized Brigade dated 9 June 1993
T548	Issuance of basic indicators of the violation of security dated 11 June 1993
T549	Issuance of the Regulations of the military security within the armed forces of the RBiH dated 12 June 1993
T550	Notice and request to initiate the conduct of disciplinary procedure dated 18 September 1993
T551	Approval dated 2 October 1993
T552	List of arrested and released members of the 104 th Brigade dated 20/21 July 1993

T553	Submission of the list of members of the Bugojno Public Security Station dated 30 September 1993
T554	Order dated 31 October 1993, No. 01/736-93
T555	Order dated 31 October 1993, No. 01/734-93
T556	Order dated 17 December 1993
T557	Proposal dated 16 January 1994
T558	Official note dated 7 July 1994
T559	Proposal for the organized collection of blood for the needs of the war hospital dated 19 August 1993
T560	Authorization for hiring prisoners dated 3 September 1993
T561	Request to the Bugojno Municipality Wartime Presidency dated 6 September 1993
T562	Report dated 25 September 1993
T563	Assessment of the security situation dated 10 October 1993
T564	Assessment of the security situation dated 23 October 1993
T565	Excerpt from the Record dated 20 December 1993
T566	Conclusion of the Bugojno Municipality Wartime Presidency dated 28 December 1993
T567	Imposing a disciplinary measure of imprisonment for soldiers from 31 December 1993
T568	Rules of military security within the armed forces of RBiH dated 11 June 1993.
T568a	Booklet – rule for the work of the military security service within the armed forces of BiH
T569	Order (to prevent moving the citizens of Serb and Croat ethnicity out of Zenica) dated 30 August 1993
T570	Daily bulletin of the Public Security Station dated 4 August 1993
T571	Daily bulletin of the Bugojno Public Security Station dated 5 August 1993

T572	Exhibit is returned to the Prosecutor's Office in order to be certified on 1 November 2009
T573	Daily bulletin of the Bugojno Public Security Station dated 9 August 1993
T574	Daily bulletin of the Bugojno Public Security Station dated 11 August 1993
T575	Daily bulletin of the Bugojno Public Security Station dated 13 August 1993
T576	Daily bulletin of the Bugojno Public Security Station dated 14 August 1993
T577	Daily bulletin of the Bugojno Public Security Station dated 15 August 1993
T578	Daily bulletin of the Bugojno Public Security Station dated 20 August 1993
T579	Daily bulletin of the Bugojno Public Security Station dated 25 August 1993
T580	Daily bulletin of the Bugojno Public Security Station dated 9 September 1993
T581	Daily bulletin of the Bugojno Public Security Station dated 17 September 1993
T582	Exhibit returned to the Prosecutor's Office on 11 November 2009
T583	Daily bulletin of the Public Security Station dated 4 October 1993
T584	Handwritten exhibit, No. 148/1
T585	Record on handover of documents to the security organ of the West Operations Group dated 2 December 1993.
T586	Letter
T587	ICRC message by Dragan Erkapić
T588	Letter dated 3 September 1993
T589	Instruction dated 18 March 1994
T590	List of soldiers to be exchanged dated 24 February 1994

T591	List of prisoners-members of the aggressor's unit detained since 23 January 1994
T592	Letter dated 6 December 1993 (signed by Mehmed Alagić, Selmo Cikotić and Senad Dautović)
T593	Order of the West Operations Group Command dated 8 March 1994
T594	Order, conf. No. 05/952-1 23 November 1992.
T595	Order on appointment dated 15 March 1994
T596	Order No. 570-2/92 dated 14 September 1992
T597	Proposal by the commander of the 307 th Motorized Brigade dated 20 February 1993
T598	List of companies within the West Operations Group dated 27 January 1994
T599	Order, conf. No. 05/851-2/92 dated 9 November 1992
T600	Personal file of Senad Dautović
T601	Personal file of Enes Handžić
T602	Announcement on the appointment dated 17 March 1993
T603	Arrest Order dated 4 August 1993
T604	Apprehension Order dated 3 August 1993
T605	Order dated 12 August 1993
T606	Order dated 10 September 1993
T607	Apprehension Order dated 30 September 1993
T608	Apprehension order dated 18 September 1993
T609	Approval to furnish the premises dated 8 October 1993
T610	Order to arrest Nikica Miloš dated 29 September 1993
T611	Note book
T612	Information linked to the prisoners who were members of the HVO from 11 November 1993
T613	Decision dated 25 March 1993

T614	Application for the appointment dated 30 October 1993
T615	Conclusion dated 13 March 1993
T616	Proposal by the Ministry of Interior concerning the staffing issue dated 12 March 1993
T617	Order by Enver Hadžihasanović dated 1 December 1992
T618	Application dated 30 July 1993
T619	Taking care of the population, addressed to the 3 rd Corps on 27 July 1993
T620	Response to the Report dated 19 September 1993
T621	Visit to the detained soldiers of 14 September 1993
T622	Negotiations with HVO dated 7 October 1993
T623	Information aimed at checking the situation dated 20 August 1993
T624	Approval dated 20 October 1993
T625	Information dated 18 August 1993
T626	Order dated 12 March 1993
T627	Order dated 18 November 1992
T628	Announcement by the West Operations Group dated 17 August 1993
T629	Record on the examination of suspect Enes Handžić dated 16 April 2007
T630a	Record on the examination of Senad Dautović dated 16 April 2007
T630	Record on the examination of suspect Senad Dautović dated 16 April 2007
T631b	Record on the examination of suspect Nisvet Gasal dated 13 September 2007
T631a	Record on the examination of Nisvet Gasal dated 29 March 2007
T631	Record on the examination of suspect Nisvet Gasal dated 22 March 2007

T632b	Record on the examination of Musajb Kukavica dated 13 September 2007
T632a	Record on the examination of suspect Musajb Kukavica dated 20 April 2007
T632	Record on the examination of suspect Musajb Kukavica dated 22 March 2007
T633	Outline of the detained police officers of the Ministry of Interior dated 1 August 1993
T634	Outline of arrested home guards and individuals issued with compulsory work permit dated 1 August 1993
T635	Outline of soldiers of the III battalion dated 1 August 1993
T636	Outline of arrested soldiers of II battalion dated 1 August 1993
T637	Outline of arrested soldiers of I battalion dated 1 August 1993
T638	Outline of arrested individuals who were members of different special HVO services dated 1 August 1993
T639	Outline of arrested military police officers of the Bugojno HVO dated 1 August 1993
T640	Note book by Dževad Mlaćo
T641	Record on the examination of Enes Handžić dated 22 April and 16 May 2011
T642	Enes Handžić's diary
T643	Decision on the establishment of wartime hospital dated 15 July 1992
T644	Order dated 25 July 1992
T645	Report on the work of SJB Bugojno in 1993
T646	Decision of 17 October 1993
T647	CD

C. LIST OF EXHIBITS OF THE ACCUSED GASAL AND KUKAVICA

Exhibit number	Content of evidence
O1/1	Approval dated 11 October 1993
O2/1	Approval dated 25 December 1993
O3/1	Notification dated 29 September 1993
O4/1	Order dated 22 January 1994
O5/1	Official note dated 27 August 1993
O6/1	Release from prison dated 13 November 1993
O7/1	Approval dated 7 October 1993
O8/1	Approval dated 11 October 1993
O9/1	Approval dated 4 September 1993
O10/1	Order dated 30 November 1993
O11/1	Order dated 27 November 1993
O12/1	Approval for release dated 21 October 1993
O13/1	Approval dated 20 August 1993
O14/1	List of soldiers (of the Army of RBiH) for labor in Pavić Polje dated 30 January 1994
O15/1	Request to bring detainee for interview dated 24 August 1993
O16/1	Decision number 01-124-86/093 dated 24 August 1993
O17/1	Official note number 307-13-993/93 dated 4 October 1993
O18/1	Letter number 03/1-298-2 dated 18 May 1994
O19/1	Daily report number 307-823/94 dated 22 January 1994
O20/1	Daily report number 307-836/94 dated 23 January 1994
O21/1	Daily report number 308-863/94 dated 1 February 1994
O22/1	Letter number KT-RZ-162/05 and KT-RZ-125/07 dated 22 September 2010
O23/1	Approval to Nisvet Gasal dated 21 October 1993

D. LIST OF EXHIBITS OF THE THIRD ACCUSED ENES HANDŽIĆ

Exhibit number	Content of evidence
O1/3	Personnel File for Sabahudin Gazić
O2/3	Enclosure no. 1 Links of command and control of military police companies and security sections in OG „West“
O3/3	Sketch made by expert witness Muslimović during his testimony
O4/3	Sketch made by expert witness Muslimović during his testimony
O5/3	Sketch made by expert witness Muslimović during his testimony
O6/3	Sketch made by expert witness Muslimović during his testimony
O7/3	Enclosure no. 02/93 Structure and links of command and control of „Unified Command of the Army of RBiH Bugojno“
O8/3	Finding and opinion of the expert witness Fikret Muslimović
O9/3	Record of the 16th extraordinary session of the Bugojno Municipality Wartime Presidency dated 26 July 1993
O10/3	Record of the 17th extraordinary session of the Bugojno Municipality Wartime Presidency dated 28 July 1993
O11/3	Record of the 18th extraordinary session of the Bugojno Municipality Wartime Presidency dated 29 July 1993
O12/3	Record of the 19th extraordinary session of the Bugojno Municipality Wartime Presidency dated 10 August 1993
O13/3	Record of the 84th session of the Bugojno Municipality Wartime Presidency dated 17 August 1993
O14/3	Record of the 80th session of the Bugojno Municipality Wartime Presidency dated 1 August 1993
O15/3	Record of the 86th session of the Bugojno Municipality Wartime Presidency dated 25 August 1993
O16/3	Record of the 87th session of the Bugojno Municipality Wartime Presidency dated 8 September 1993

O17/3	Order of the Wartime Presidency – Unified Command of the Army of BiH dated 4 August 1993
O18/3	Decision of the Bugojno Municipality Wartime Presidency and Unified Command of the Bugojno Army dated 4 August 1993
O19/3	Decision of the Wartime Presidency dated 10 August 1993
O20/3	Decision of the Wartime Presidency number 01-119-19/93 dated 16 August 1993
O21/3	Decision of the Wartime Presidency number 01-119-84/93 dated 16 August 1993
O22/3	Official note of the Command of 307th Brigade, Security Organ no. 307-13-1063/93 dated 18 October 1993
O23/3	Official note of the Command of 307th Brigade, Security Organ number 307-13-1023/93 dated 12 October 1993

E. LIST OF EXHIBITS OF THE FOURTH ACCUSED SENAD DAUTOVIĆ

Exhibit number	Contents of the exhibit
O1/4	Map
O2/4	Daily bulletin of SJB Bugojno dated 14 May 1993
O3/4	Daily bulletin of SJB Bugojno, number 15/05
O4/4	Photographs, 22 pcs
O5/4	Letter of witness Sabahudin Gazić
O6/4	Finding of the Specialist service of JU <i>/Transl. note: Public Institution/</i> Bugojno Medical Center
O7/4	Decision of Herceg Bosna Defense Department
O8/4	Appointment of Stipe Lučić to the position of Deputy Commander of the 1st Battalion of Bugojno Homeguard Regiment dated 6 March 1993
O9/4	Record of the HVO Defense Department dated 3 September 1993
O10/4	Letter of the Army of BiH dated 18 July 1993
O11/4	Decision of the Bugojno Municipality Wartime Presidency dated 4 August 1993
O12/4	CD
O13/4	List of examined dead bodies and their identification
O14/4	Official note dated 16 September 1993
O15/4	Photo documentation of the dead bodies
O16/4	CD
O17/4	Notification of CSB <i>/Transl. note: Security Services Center/</i> Zenica dated 9 August 1993
O18/4	Daily bulletin of SJB Bugojno dated 12 August 1993
O19/4	Notification of the District Military Court in Travnik dated 7 March 1995
O20/4	Criminal records for 1993, 1994 and 1995
O22/4	Ten receipts on the confiscation of motor vehicles

O23/4	Official note dated 26 May 1993
O24/4	Order of SJB Bugojno dated 25 July 1993
O25/4	Order of SJB Bugojno dated 26 July 1993
O26/4	Police emblem
O27/4	CD
O28/4	Criminal report dated 25 December 1993
O29/4	Analytical overview II dated 24 December 1993
O29/4a	Analytical overview I dated 23 December 1993
O30/4	Request for launching of investigation by the Higher Public Prosecutor's Office dated 17 August 1994
O31/4	Supplement to the criminal report number KU-155/94 dated 28 September 1994
O32/4	Wanted notice dated 7 October 1994
O33/4	Statement of S.Š. dated 19 January 1994
O34/4	Notification number 19-2/01-1-100/93 dated 14 June 1993
O35/4	Finding and opinion of expert witness Mile Matijević, December 2010
O36/4	Army of Bosnia and Herzegovina of 2 July 1993 information – Order, submitted to all Commands and units in the Bugojno territory
O37/4	Army of Bosnia and Herzegovina, Joint Command of the ARMY Bugojno, strictly confidential number 02/788-4 dated 2 July 1993 – Regular weekly report submitted to OG WEST COMMAND
O38/4	Public Security Station Bugojno number 19-2/01-1-160/93 dated 6 July 1993, Information
O39/4	JOINT COMMAND OF THE ARMY, BUGOJNO number 02/788-6, dated 11 July 1993 – Interim report of the operations organ – submitted to OG WEST
O40/4	Wartime Presidency, number 87/93, dated 8 September 1993 – Excerpt from the minutes of the regular 87 th Session of the Wartime Presidency, Bugojno municipality held on 6 September 1993
O41/4	Roman catholic Parish office Bugojno – to the Chief of Bugojno MUP /Ministry of the Interior/ - Request to visit prisoners at the Stadium – dated 9 October 1993

O42/4	Public Security Station Bugojno number 19-2/01-539/93, dated 9 October 1993 – Information to the Roman catholic Parish office
O43/4	DECISION on resubordinating units of the reserve component of the Ministry of the Interior to the units of the Army, number 1204/92, dated 27 July 1992
O44/4	MUP – Security Services Center Zenica number 19-I/N – dated 16 August 1993 – Minutes of the meeting of the extended Collegium of the SSC Zenica
O45/4	Command of the 3 rd Corps - MUP – Security Services Center Zenica – Order – Instruction of the Command of the 3 rd Corps and Security Services Center Zenica dated 6 September 1993
O46/4	Security Services Center Zenica number 19-1/N-120-196/93, dated 23 February 1993 – R BiH MUP – Administration for legal and administrative affairs, aliens and personnel tasks and assignments – data on employees who went over to the aggressor side
O47/4	Security Services Center Zenica – Bugojno Public Security Station, number 19-2/01-1, dated 31 March 1993 – to the Executive Board of the Bugojno municipality – Information on the work of the Bugojno Public Security Station in 1992 with the proposal of measures
O48/4	INFORMATION on the work of the Bugojno Public Security Station in 1992 - March 1993
O49/4	Wartime Presidency – Executive Board – number 02- /93, dated 19 April 1993 – conclusion
O50/4	3 rd Zenica CORPS – number 04/28-2, dated 29 November 1992 – Information of financing MUP
O51/4	Armed Forces Supreme Command Main Staff – Security Administration – number 03/259-2 dated 30 November /92 – Information on treatment of Muslim population in Prozor and Bugojno by the HVO members – to the Chief of the R BiH Armed Forces Supreme Command Main Staff
O52/4	Croatian Community of Herceg Bosna – Croatian Defense Council Bugojno – Minutes from the session of the Croatian Defense Council held on 22 April 1993

O53/4	Croatian Community of Herceg Bosna – Croatian Defense Council Bugojno - Minutes from the session of the Croatian Defense Council held on 29 April 1993
O54/4	Croatian Community of Herceg Bosna – Croatian Defense Council - Minutes from the session of the Croatian Defense Council held on 9 June 1993
O55/4	Croatian Community of Herceg Bosna – Croatian Defense Council – Minutes from the session held on 15 June 1993
O56/4	Public Security Station Bugojno – number 19-2/02-230- dated 3 April 1993 – Official note related to the reports made by citizens
O57/4	Public Security Station, Bugojno Police – Daily bulletin number 17/04
O58/4	Public Security Station, Bugojno Police – Daily bulletin number 18/04
O59/4	Public Security Station, Bugojno Police – Daily bulletin number 19/04
O60/4	Public Security Station, Bugojno Police – Daily bulletin number 21/04
O61/4	Public Security Station, Bugojno Police – Daily bulletin number 22/04
O62/4	Public Security Station, Bugojno Police – Daily bulletin number 25/04
O63/4	BiH Army, OG West – Assistant to Commander for Security, number 04-134/93, dated 19 April 1993 – Counter-intelligence assessment in the territory of Bugojno municipality – relations with HVO – 3 rd Corps Command
O64/4	307 th Motorized Brigade Command – Security organ – number 307-13/168, dated 21 April 1993 – Report, submitted to OG West
O65/4	Bugojno Public Security Station – Daily bulletin number 05/05
O66/4	Bugojno Public Security Station – Daily bulletin number 09/05
O67/4	Bugojno Public Security Station – Daily bulletin number 10/05
O68/4	Bugojno Public Security Station – Daily bulletin number 13/05
O69/4	Bugojno Public Security Station – Daily bulletin number 19/05
O70/4	Bugojno Public Security Station – Daily bulletin number 27/05

O71/4	Bugojno Public Security Station – Daily bulletin number 28/05
O72/4	Bugojno Public Security Station – Daily bulletin number 29/05
O73/4	Bugojno Public Security Station – Daily bulletin number 30/05
O74/4	Bugojno Public Security Station – Daily bulletin of 31 March 1993
O75/4	307 th Motorized Brigade Command – Security organ, number 307-13/213 dated 6 May 1993 – Report submitted to the Command of the 3 rd Corps
O76/4	Army of BiH, 307 th Motorized Brigade – Military Police, Service for General Affairs and Crime, number 1100/418/93, dated 6 May 1993 – Statement
O77/4	307 th Motorized Brigade Command – number 02/777-26, dated 12 May 1993 – Regular combat report – Operations group West
O78/4	Army BiH, OG West – number 04-170-3-96, dated 24 May 1993 – to the Commander of the OG West – Report on individuals causing incidents
O79/4	Bugojno Public Security Station – number 19-2/01-1-153/93, dated 26 May 1993 – Official note on seizure of official vehicle and firearms
O80/4	Bugojno Public Security Station – Daily bulletin number 02/06
O81/4	Bugojno Public Security Station – Daily bulletin number 04/06
O82/4	Bugojno Public Security Station – Daily bulletin number 06/06
O83/4	Bugojno Public Security Station – Daily bulletin number 07/06
O84/4	Bugojno Public Security Station – Daily bulletin number 13/06
O85/4	Bugojno Public Security Station – Daily bulletin number 15/06
O86/4	Bugojno Public Security Station – Daily bulletin number 16/06
O87/4	Bugojno Public Security Station – Daily bulletin number 18/06
O88/4	Bugojno Public Security Station – Daily bulletin number 23/06
O89/4	Bugojno Public Security Station – Daily bulletin number 07/07
O90/4	Bugojno Public Security Station – Daily bulletin number 09/07
O91/4	Bugojno Public Security Station – Daily bulletin number 10/07
O92/4	Bugojno Public Security Station – Daily bulletin number 11/07
O93/4	Bugojno Public Security Station – Daily bulletin number 12/07
O94/4	Bugojno Public Security Station – Daily bulletin number 13/07

O95/4	Bugojno Public Security Station – Daily bulletin number 14/07
O96/4	Bugojno Public Security Station – Daily bulletin number 15/07
O97/4	Bugojno Public Security Station – Daily bulletin number 16/07
O98/4	Bugojno Public Security Station – Daily bulletin number 17/07
O99/4	307 th Motorized Brigade Command – number 307-13/382, dated 9 July 1993
O100/4	307 th Motorized Brigade Command – Security Organ - number 307-13/390, dated 12 July 1993 – Information, submitted – HVO members deprived soldiers of the Army of liberty
O101/4	Command of the 307 th Motorized Brigade, Military Police, Crime Prevention Service - number 1100-943/93, dated 17 July 1993 – circumstances and incidents caused by the HVO as well as the murders
O102/4	Command of the 307 th Motorized Brigade, Military Police, Crime Prevention Service – number 1100-942/93, dated 17 July 1993 – Statement related to the murder of one member of the Army Military Police in Bristovi and maltreatment of civilians by the members of HVO
O103/4	307 th Motorized Brigade – Crime Prevention Service – number 1100-940/93, dated 17 July 1993 – Statement on maltreatment and plundering of civilians - Bristovi
O104/4	307 th Motorized Brigade Command – Crime Prevention Service number 1100-939/93, dated 17 July 1993 – Statement - Bristovi
O105/4	Copy of the Military ID - DAUTOVIĆ SENAD
O106/4	Army of BiH – 7 th Corps Command – number 05/14-200-8 – Decision on promotion to ranks RBiH
O107/4	Command of the 77 th Vrbas Division – number 05/2-2-111 dated 2 May 1995 – Excerpt from the Order on appointment
O108/4	Bugojno Public Security Station – number 19-2/01-1-275/93, dated 19 August 1993 – to 307 th Motorized Brigade – Submitting reports on combat activities, Public Security Station Bugojno
O109/4	Letter sent by father Janko to <i>Slobodna Dalmacija</i> magazine on 19 August 1993 through the UN and EU

O110/4	Bugojno Public Security Station – number 19-2/01-1-186/93 dated 29 July 1993 – Certificate on protection of property of Croats
O111/4	Bugojno Public Security Station - number 19-2/01-1-70/93 dated 30 July 1993 – Certificate
O112/4	Bugojno Public Security Station - number 19-2/01-1-190/93 dated 31 July 1993 – Certificate for father Bruno Batinić
O113/4	Bugojno Public Security Station - number 19-2/01-1-192/93 dated 31 July 1993 – Certificate
O114/4	Bugojno Public Security Station - number 19-2/01-1-367/93 dated 3 September 1993 – Permit
O115/4	Bugojno Public Security Station - number 19-2/01-1-396/93 dated 8 September 1993 – Certificate
O116/4	Bugojno Public Security Station – Daily bulletin - Circumstances: reports pertaining to misappropriation of property during the conflicts, problems in police work, increase in criminal offences dated 3 August 1993
O117/4	Bugojno Public Security Station - Daily bulletin dated 7 August 1993 – three individuals detained for rape, measures undertaken before the list was submitted from the Parish office
O118/4	Bugojno Public Security Station - Daily bulletin - dated 17 August 1993 - Crime
O119/4	Bugojno Public Security Station - Daily bulletin - dated 21 August 1993 – Crime
O120/4	Bugojno Public Security Station - Daily bulletin - dated 23 August 1993 - Minister Bakir Alispahić's visit
O121/4	86. Bugojno Public Security Station - Daily bulletin - dated 24 August 1993 – Crime
O122/4	Bugojno Public Security Station - Daily bulletin - dated 26 August 1993 – Crime
O123/4	Bugojno Public Security Station - Daily bulletin - dated 27 August 1993 – Crime
O124/4	Bugojno Public Security Station - Daily bulletin - dated 29 August 1993 - Crime

O125/4	Bugojno Public Security Station - Daily bulletin - dated 30 August 1993 - Crime
O126/4	Bugojno Public Security Station - Daily bulletin - dated 2 September 1993 - Crime
O127/4	Bugojno Public Security Station - dated 5 September 1993 - Crime – mobilization of the Public Security Station due to situation in G. Vakuf
O128/4	Bugojno Public Security Station - dated 7 September 1993 - Crime – Police Maneuver Unit is still at the frontlines carrying out tasks
O129/4	Bugojno Public Security Station - dated 11 September 1993 - Crime – still on frontlines, two police officers wounded
O130/4	Bugojno Public Security Station - dated 12 September 1993 - Crime – still engaged at frontlines
O131/4	Bugojno Public Security Station - Daily bulletin number 20/09
O132/4	Bugojno Public Security Station - Daily bulletin number 21/09
O133/4	Bugojno Public Security Station - Daily bulletin number 22/09
O134/4	Bugojno Public Security Station - Daily bulletin number 30/09
O135/4	Bugojno Public Security Station - Daily bulletin number 01/10
O136/4	Bugojno Public Security Station - Daily bulletin number 02/10
O137/4	Bugojno Public Security Station - Daily bulletin number 03/10
O138/4	Bugojno Public Security Station - Daily bulletin number 05/10
O139/4	Bugojno Public Security Station - Daily bulletin number 05/10
O140/4	Bugojno Public Security Station - Daily bulletin number 07/10
O141/4	Bugojno Public Security Station - Daily bulletin number 08/10
O142/4	Bugojno Public Security Station - Daily bulletin number 13/10
O143/4	Bugojno Public Security Station - Daily bulletin number 14/10
O144/4	Bugojno Public Security Station - Daily bulletin number 15/10
O145/4	Bugojno Public Security Station - Daily bulletin number 16/10
O146/4	Bugojno Public Security Station - Daily bulletin number 17/10
O147/4	Bugojno Public Security Station - Daily bulletin number 18/10
O148/4	Bugojno Public Security Station - Daily bulletin number 19/10
O149/4	Bugojno Public Security Station - Daily bulletin number 23/10
O150/4	Bugojno Public Security Station - Daily bulletin number 24/10

O151/4	Bugojno Public Security Station - Daily bulletin number 29/10
O152/4	Bugojno Public Security Station - Daily bulletin number 30/10
O153/4	Bugojno Public Security Station - Daily bulletin number 31/10
O154/4	Bugojno Public Security Station - Daily bulletin number 01/11
O155/4	Bugojno Public Security Station - Daily bulletin number 02/11
O156/4	Bugojno Public Security Station - Daily bulletin number 04/11
O157/4	Bugojno Public Security Station - Daily bulletin number 05/11
O158/4	Bugojno Public Security Station - Daily bulletin number 06/11
O159/4	Bugojno Public Security Station - Daily bulletin number 12/11
O160/4	Bugojno Public Security Station - Daily bulletin number 20/11
O161/4	Bugojno Public Security Station – number 19-2/02-230-KU-32/93 dated 6 August 1993 – to Higher Public Prosecutor – Criminal report against: 1. Nijaz Čaluk, 2. Senad Čaluk 3. Esad Jusić
O162/4	Findings and opinion of the Specialist for Jelena Markić and Pavka Pavić
O163/4	Command of the 307 th Motorized Brigade - ORGAN FOR RPPP /Translator's note: abbreviation unknown/ number 05./500-1941, dated 7 September 1993 – Information on engagement of military conscripts, submitted to the Chief of the Bugojno Public Security Station
O164/4	Security Services Center Zenica number 19-1/02-611/93, dated 9 August 1993 – Information on apprehension of perpetrators of criminal offences
O165/4	Bugojno Public Security Station – Crime Prevention Section number 19-2/02-230-KU:34/93, to the Higher Public Prosecutor's Office Zenica – criminal report against Mehmed Tanković, record on on-site inspection, record on external body examination
O166/4	Bugojno Public Security Station - number 19-2/02-230KU:34/93, dated 12 August 1993 – Statement
O167/4	Bugojno Public Security Station number 19-2/02-230-KU:36/93, dated 13 September 1993 – Public Prosecutor Bugojno
O168/4	Bugojno Public Security Station number 19-2/02-230-KU;36/93, dated 3 September 1993 – Record on verbal criminal report submitted by Karmela Škaro to the Bugojno Public Security Station

O169/4	Bugojno Public Security Station number 19-2/02-230-KU:37/93, dated 13 September 1993 – to the Higher Public Prosecutor
O170/4	Bugojno Public Security Station number 19-2/02-230-KU:37/93, dated 3 September 1993 – Record on submitted criminal report
O171/4	Bugojno Public Security Station number 19-2/02-230-KU38/93, dated 21 September 1993 – Criminal report to the Public Prosecutor Zenica
O172/4	Bugojno Public Security Station number 19-2/02-230-KU:40/93, dated 20 September 1993 – Criminal report submitted to the Higher Public Prosecutor
O173/4	Bugojno Public Security Station number 19-02-230-KU:41/93, dated 16 September 1993 – Record on submitted verbal criminal report
O174/4	Bugojno Public Security Station number 19-2/02-230-KU:42/93, dated 24 September 1993 - Criminal report submitted to the Higher Public Prosecutor Zenica against the unknown perpetrator
O175/4	Bugojno Public Security Station number 19-2/02-230-KU:43/93, dated 24 September 19963 - Criminal report submitted to the Higher Public Prosecutor against the unknown perpetrator
O176/4	Bugojno Public Security Station number 19-2/02-230-KU:44/93, dated 13 September 1993 - Criminal report submitted to the Higher Public Prosecutor Bugojno – against the unknown perpetrator
O177/4	Bugojno Public Security Station number 19-2/02-230-KU:45/93, dated 23 September 1993 - Criminal report submitted to the Higher Public Prosecutor Zenica against the unknown perpetrator
O178/4	Bugojno Public Security Station number 19-2/02-230-KU:46/93, dated 23 September 1993 - Criminal report submitted to the Higher Public Prosecutor Zenica
O179/4	Bugojno Public Security Station number 19-2/02-230-KU:78,83/92 and KU:4,7,8 and 23/93 dated 29 September 1993 – to the Higher Public Prosecutor Zenica – Criminal report against the unknown perpetrator

O180/4	Bugojno Public Security Station number 19-2/02-230-KU:47/93, dated 30 September 1993 – Criminal report submitted to the Higher Prosecutor Zenica against the unknown perpetrator
O181/4	Record on on-site inspection dated 19 September 1993
O182/4	Bugojno Public Security Station number 19-2/02-230-sl/93, dated 17 September 1993 – Statement on identification of the body
O183/4	Bugojno Public Security Station number 19-2/02-230- /96, dated 3 October 1993 – Statement provided by Namir Karaga
O184/4	Bugojno Public Security Station number 19-2/02-230-KU:50/93, dated 6 October 1993 – Criminal report submitted to the Higher Public Prosecutor Zenica
O185/4	Bugojno Public Security Station number 19-2/02-230-20/93, dated 6 October 1993 – Official note – Vesela
O186/4	Bugojno Public Security Station number 19-2/02-230-KU:53/93, dated 4 October 1993 – Criminal report against underage Osman Hajdarević on account of murder – submitted to the Higher Public Prosecutor Zenica
O187/4	Army of RBiH, 307 th Motorized Brigade – Military Police – Crime Prevention Service number 1100-1351/93, dated 7 September 1993 – Letter sent to the Bugojno Public Security Station, Crime Prevention Service
O188/4	Bugojno Public Security Station number 19-2/02-230-KU:51/93, dated 6 October 1993 – to the Higher Public Prosecutor Zenica - CRIMINAL REPORT AGAINST DŽEVAT VELAGIĆ for existence of suspicion that he had committed the criminal offence of Murder in violation of Article 36, paragraph 1 of the CC of RBiH to the detriment of Ivo Grabovac

O189/4	Bugojno Public Security Station number 19-2/02-230-KO: dated 6 October 1993 – to the Higher Public Prosecutor Zenica – reference number: our criminal reports against unknown perpetrators number 19-2/02-230-KU: 38, 40, 42, 43, 44, 45, 46, 47, 48 and 50/93 dated 30 September 1993 – SPECIAL REPORT as the supplement to our criminal reports against unknown perpetrators under the referenced number and date
O190/4	Bugojno Public Security Station number 19-2/02-230-KO:72/93, dated 5 November 1993 – Record on submitted verbal criminal report by Dragutin Budimir
O191/4	Bugojno Public Security Station number 19-2/02-230-KU:83/93, dated 24 November 1993 – to the Basic Public Prosecutor in Bugojno – Criminal report against Bahrudin Čizmo, Hajrudin Morić, Suad Daul and Halid Dervišić for the existence of grounded suspicion that they committed the criminal offence of Theft to the detriment of Zvonko Čuljak
O192/4	Bugojno Public Security Station number 19-2/02-230-3/93, dated 24 September 1993 – Decision on ordering Islam Manjgafić into custody a. Bugojno Public Security Station number 19-2/02-230-3a/93, dated 27 September 1993 – Decision on terminating custody of Islam Manjgafić
O193/4	Bugojno Public Security Station number 19-2/02-230-7/93, dated 24 September 1993 - Decision on ordering Dževad Hadžić into custody
O194/4	Bugojno Public Security Station number 19-2/02-230-7a/93, dated 27 September 1993 - Decision on terminating custody of Dževad Hadžić
O195/4	Bugojno Public Security Station number 19-2/02-230-10/93, dated 25 September 1993 - Decision on ordering Senad Habul into custody

O196/4	Bugojno Public Security Station number 19-2/02-230-10a/93, dated 28 September 1993 - Decision on terminating custody of Senad Habul
O197/4	Bugojno Public Security Station number 19-2/02-230-13/93, dated 26 September 1993 - Decision on ordering Hasan Ajanić into custody
O198/4	Bugojno Public Security Station number 19-2/02-230-13a/93, dated 29 September 1993 - Decision on terminating custody of Hasan Ajanić
O199/4	Bugojno Public Security Station number 19-2/02-230-14/93, dated 26 September 1993 - Decision on ordering Reuf Mandžuka into custody
O200/4	Bugojno Public Security Station number 19-2/02-230-14a/93, dated 29 September 1993 - Decision on terminating custody of Reuf Mandžuka
O201/4	Bugojno Public Security Station number 19-2/02-230-15/93, dated 26 September 1993 - Decision on ordering Đulaga Mandžuka into custody
O202/4	Bugojno Public Security Station number 19-2/02-230-15a/93, dated 29 September 1993 - Decision on terminating custody of Đulaga Mandžuka
O203/4	Basic Public Prosecutor's Office Bugojno number KTN-br.1/93, dated 22 September 1993 - MUP Bugojno – submit the Report to the Higher Prosecutor's Office in Zenica
O204/4	EXCERPT FROM THE CRIMINAL RECORD OF THE BUGOJNO PUBLIC SECURITY STATION DATED 30 October – 6 November 1993 MUP CERTIFICATION - BUGOJNO POLICE ADMINISTRATION number 02/4-04-2-2258/10, dated 13 December 2010
O205/4	Bugojno Wartime Presidency number 01-107-19/93, dated 10 August 1993 - Decision

O206/4	Notes from the work meeting of the representatives of the MUP Public Security Station - Bugojno, Military Police of the 307 th Motorized Brigade, Minor Offence Court and Inspection Service held on 27 September 1993 in the office of the President of the Executive Board of the Bugojno municipality
O207/4	Bugojno Public Security Station number 19-2/02-230-138/93, dated 29 November 1993 – submitted statements of Croats to the State Security Service – Bugojno Field Office
O208/4	<p>Army of RBiH, Command of the 307th Motorized Brigade, Security organ number 307-13-1094/93, dated 21 October 1993, submitted Official note to the Bugojno MUP, personally to the Chief</p> <p>a. Command of the 307th Motorized Brigade, Security Organ number 307-13-1093/93, dated 21 October 1993</p>
O209/4	<p>Bugojno Public Security Station number 19-2/01-1-808/93, dated 30 November 1993 - Information, submitted to the Command of the 307th Mountain Brigade – reference number – document number 307-13-1094/93, dated 21 October 1993</p> <p>a. Bugojno Public Security Station dated 1 November 1993 – Information on confiscated weapons</p> <p>b. Bugojno Public Security Station dated 14 November 1993 – Statement by Sead Duraković</p> <p>c. Bugojno Public Security Station number 19-2/01-1- /93, dated 27 November 1993 – Statement by Esad Šljivo</p>

O210/4	HZ-HB Croatian Defense Council Bugojno number 02-129-1242/92, dated 4 October 1992 CONCLUSION 1. Issuance of travel permits to Muslims is hereby prohibited until the economy agreement is reached between HVO and Territorial Defense Bugojno
O211/4	HZ-HB HVO Bugojno number 02-129-466/93 – Minutes from the Bugojno HVO session held on 10 April 1993
O212/4	Minutes of the meeting held on 16 April 1993 on the premises of the Forestry Company Koprivnica
O213/4	R BiH HZ-Herceg Bosna <i>Eugen Kvaternik</i> Brigade Bugojno 16 July 1993 - on the basis of the Order number 01-1700/93 we submit targets - Operations zone North-western Herzegovina Forward Command Post Prozor, Colonel Željko Šiljeg
O214/4	Bugojno Public Security Station number 19-2/01-1-220/93 dated 10 August 1993 – Request to the War Hospital - Chief of HES, Bugojno
O215/4	12 November 1991 - Conclusion reached during the joint meeting of the Herzegovina regional community and Travnik regional community
O216/4	13 November 1991 – Decision on establishing HZ-HB
O217/4	March 1992 – HDZ, Bugojno municipal Board, regional Crisis Staff Grude
O218/4	10 April 1992 – HZHB, Order issued to all HVO Staffs
O219/4	19 May 1992 – RH, Command of South battle zone, Command of the operations zone Split, Command Post Ploče. Establishment of Forward Command Post – Central Bosnia – Order
O220/4	19 May 1992 – RH, Command of South battle zone, Command of the operations zone Split, Command Post Ploče. Deployment of <i>Frankopan</i> Battalion to Central Bosnia, Order
O221/4	23 June 1992 – Order of the President of the Presidency of BiH, Alija Izetbegović

O222/4	7 July 1992 – Decision on appointment of municipal HVO in Bugojno
O223/4	HVO Bugojno Report
O224/4	12 July 1992 – HZHB, Croatian Army Bugojno, Authorization issued to Ivica Žulj
O225/4	21 July 1992 – HZHB, Croatian Army Bugojno, Authorization issued to Branko Šarić
O226/4	14 August 1992 – Minutes of the session of the HZHB Presidency
O227/4	September 1992 – Mostar – Peoples' Gazette, Official Gazette of HZHB, Decision on establishing HZHB
O228/4	18 September 1992 – Decision reached during the session of the Bugojno HVO on appointment of members of the Bugojno municipality Presidency by Bugojno HVO
O229/4	22 September 1992 – Excerpt from the minutes of session of the HVO leaders in municipalities of Central Bosnia
O230/4	18 September 1992 - Official Gazette of RBiH – Annulment of the Decision on establishment of HZHB
O231/4	11 September 1992 - Military post 1114 Split – Approval of Mirko Šundov on allocation of resources
O232/4	24 October 1992 – Decision pertaining to HVO Bugojno / Kordić and Blaškić
O233/4	16 October 1992 – Croatian Army requests data for Brigade officers and municipal HVO Staffs of the operations zone of North western Herzegovina
O234/4	9 October 1992 – Order issued by Ivica Lučić on submitting data on officers of the Croatian Army
O235/4	24 October 1992 – Order to allocate materials for the needs of Bugojno HVO
O236/4	Excerpt from the book – Mesud Hero

O237/4	16 November 1992 – Order to allocate materials for the needs of the Bugojno HVO
O238/4	28 November 1992 – Technical – traffic administration; Order to allocate materials for the needs of Bugojno HVO
O239/4	23 November 1992 – to all Operations zones and independent units – subject - providing fuel for HVO vehicles
O240/4	4 November 1992 – Report on two business trips
O241/4	23 December 1992 – Recording of Dario Kordić's speech while HVO Brigade <i>Juro Francetić</i> swore a solemn oath in Podbrežje
O242/4	7 January 1993 – Instruction to Bugojno unit – urgent – command issued by Željko Šiljeg
O243/4	Request of parish priest Janko sent to Major General Slobodan Praljak, Željko Šiljeg and Miro Andrić
O244/4	20 January 1993 – newspaper article – <i>Oslobođenje</i> – <i>HVO uses force to influence the outcome of negotiations</i>
O245/4	15 January 1993 – Order of the Brigadier Malivoj Petković
O246/4	18 January 1993 – Newspaper article – <i>Oslobođenje</i> – <i>Obvious attempt at annexation</i>
O247/4	20 January 1993 – Record of the conversation with the RH President, dr. Franjo Tuđman
O248/4	25 January 1993 – Public Announcement of the Presidency of the Travnik District Assembly
O249/4	29 January 1993 – Information of the 3 rd Corps – Defense of the Republic, military secret – strictly confidential
O250/4	10 February 1993 – Minutes of the session of Bugojno HVO
O251/4	13 February 1993 – Decision on appointment of HVO Home guard units commanders

O252/4	15 February 1993 – Minutes of the HVO session
O253/4	26 February 1993 – Report on a degree of organization of Home guard with summary of material and technical equipment available and means necessary for further work and establishment
O254/4	8 March 1993 – Applications for RH citizenship
O255/4	8 March 1993 – Record of the conversation with dr. Franjo Tuđman
O256/4	11 March 1993 – Summary of the situation and proposal of necessary measures and activities to establish the Staff and Home guard units in Bugojno municipality
O257/4	28 March 1993, Press Center of the 3 rd Corps - Information
O258/4	29 March 1993 - HVO Bugojno Personnel Service; subject: information on mobilization of Military Police members
O259/4	18 March 1993 – Report on achieved organization of Home guards with the summary of material and technical equipment at disposal and means necessary to continue with the establishment
O260/4	26 March 1993 – Placement of temporary command of Home guard Brigade in Bugojno municipality, HVO, Defense section
O261/4	8 April 1993 HVO number 04-03/93, dated 8 April 93 – Excerpt from the record of the meeting of municipal HVO presidents and municipal HDZ secretaries and Military Commands
O262/4	16 April 1993 – HZHB, HVO, Command of Vitez Brigade, Report sent to Colonel Tihomir Blaš
O263/4	24 April 1993 – Record of the conversation held in the RH President, Dr. Franjo Tuđman's office
O264/4	10 May 1993 – Urgent letter – Joint Command of Central Bosnia - HVO and A BiH Travnik
O265/4	10 May 1993 – Main Staff, Deputy Chief of Main Staff to the Chief of Main Staff - Report
O266/4	11 May 1993 – report on incidents on 9 May 1993
O267/4	13 May 1993 – Announcement of the R BiH Government

O268/4	2 June 1993 – HZHB, HVO – command issued by Frano Bodrušić
O269/4	6 June 1993 – Command of 1 st Krajina Corps - Forward Command Post – Proposal to send out a warning
O270/4	6 June 1993 – Analysis of the situation in Bugojno municipality
O271/4	HVO, Bugojno - Garavi - work map
O272/4	-14 June 1993 – Appointment to officer duty– Ivica Lučić
O273/4	29 June 1993 – command issued by Željko Šiljeg – placement under Command
O274/4	1 June 1993 – Minutes of the HVO Bugojno session (safety situation in Bugojno)
O275/4	1 July 1993 – Command on appointments within the <i>Eugen Kvaternik</i> Brigade
O276/4	6 July 1993 – Željko Šiljeg – order to apprehend all men of Muslim ethnicity
O277/4	7 July 1993 – Staff of the Supreme Command of the Armed Forces of R BiH, warning to the Command of 2 nd and 3 rd Corps
O278/4	9 July 1993 – Order to secure firing positions, Željko Šiljeg
O279/4	11 July 1993 – to Command of 3 rd Corps – Regular Operations Report
O280/4	12 July 1993 – Regular Operations Report sent to the Command of the 3 rd Corps – OG West
O281/4	15 July 1993 – Regular Operations Report sent to the Command of the 3 rd Corps – OG West
O282/4	16 July 1993 <i>E. Kvaternik</i> operations zone North western Herzegovina, Forward Command Post Prozor targets
O283/4	21 July 1993 – Daily Operations Report to the Command of the 3 rd Corps
O284/4	21 July 1993 – Interim report to the Command of the 3 rd Corps, Bugojno municipality Defense Staff

O285/4	July 1993 – Command of the 3 rd Corps to the Staff of the Supreme Command of the Armed Forces of R BiH
O286/4	23 July 1993 - HZHB, HVO, HVO Main Staff Mostar
O287/4	24 July 1993 – Assistance to HVO units, request
O288/4	25 July 1993 – Report of the <i>Eugen Kvaternik</i> Brigade
O289/4	25 July 1993 – Report - Ivica Lučić
O290/4	25 July 1993 – HZHB, Tomislavgrad – to Željko Šiljeg
O291/4	Work instructions – to Marko Stipičić, from Željko Šiljeg
O292/4	26 July 1993 – Regular Operations Report to the Command of 3 rd Corps
O293/4	28 July 1993 – Command of the OG West – estimate – to the Command of the 3 rd Corps
O294/4	8 July 1993 – Statement of Abdulah Jeleč
O295/4	July 1993 – Vrbanja HVO, Bugojno municipality, HVO crimes
O296/4	Martin Bell <i>In Harm's Way</i> , book excerpt
O297/4	Security Services Center 1 Banja Luka, Official Note
O298/4	7 August 1993 – Main Staff of the Armed Forces of RBiH Supreme Command, submitting information
O299/4	14 August 1993 – Response to questions in relation to the Interim Report
O300/4	17 August 1993 – List of soldiers who receive salaries
O301/4	30 August 1993 – Data on prisoners of war to the Chief of the 3 rd Corps
O302/4	14 September 1993 – HZHB, HVO, Defense Section – Record
O303/4	23 September 1993 – R BiH, Command of the 3 rd Corps, ICRC Permit
O304/4	14 October 1993 – Order to all Brigades and independent units, Mate Boban

O305/4	22 October 1993 – Record of the conversation between the RH President, Dr. Franjo Tuđman and the Minister of Defense
O306/4	2 November 1993 – Bugojno municipality, Wartime Presidency – Public announcement
O307/4	5 November 1993 – HZHB, HVO – <i>Dr. Ante Starčević</i> Brigade, Uskoplje – Interim report
O308/4	6 November 1993 – Record of the conversation with the RH President, Dr. Franjo Tuđman
O309/4	10 November 1993 – Record of the conversation with the RH President, Dr. Franjo Tuđman
O310/4	10 November 1993 – HZHB, Information – Muslim positions in the area of responsibility of the Security and Information Service Center Rama
O311/4	12 November 1993 – Request for issuance of permit for unhindered movement
O312/4	Attack order, Military District Tomislavgrad, Forward Command Post Prozor, 13 November 93, 03:00 hours
O313/4	14 November 1993 – Report on lack of premises for quartering prisoners from Prozor
O314/4	Military District Tomislavgrad – Command - attack order of 20 November 1993
O315/4	23 November 1993 – Record of the conversation with the RH President, Dr. Franjo Tuđman
O316/4	28 November 1993 – Record of the conversation between the RH President, Dr. Franjo Tuđman and Mr. Mate Boban
O317/4	Joint Command of the Army, Bugojno number 01-094-1 dated 10 July 1993 – Order for reconnaissance– MUP Bugojno
O318/4	Bugojno Public Security Station number 19-2-433/93 dated 26 July 1993 – Report on engaging the MUP company, PSS Bugojno on 26 July 1993 in the time period from 08:00 to 20:00 hours sent to the Commander of the Bugojno Municipal Defense Staff

O319/4	Dispatch note of the Security Services Center Zenica no. 19-1/n-514/93 dated 16 September 1993 all Public Security Stations in the area are ordered to stand at full combat readiness
O320/4	Dispatch note of the PSS Bugojno number 19-2/01-1-75/93 sent to Security Services Center Zenica on resubordination of the Police Maneuver Unit of the Municipal Defense Staff G. Vakuf
O321/4	PSS Bugojno number confidential 19-2/01-1-171/93 dated 10 July 1993 Order to the Police Maneuver Unit
O322/4	PSS Bugojno number 19-2/01-1-6/93 dated 1 June 1993 – Report for MAY 1993 on status and activities of the Bugojno PSS sent to the SSC Zenica
O323/ 4	PSS Bugojno number 19-2/01-1-184/93 dated 25 July 1993 – Order of the Sector Commander on undertaking measures to protect lives and free movement of civilians
O324/4	PSS Bugojno number 19-2/01-1-48/93 dated 16 August 1993 – Dispatch note sent to the MUP R BiH – 01,05 and SSC Zenica - 01
O325/4	PSS Bugojno number 19-2/01-1-102/93 dated 14 June 1993 – Order of the Bugojno PSS Chief on appearance and conduct of the police officers of the Bugojno PSS
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G. ABBREVIATIONS

ARBiH	Army of the Republic of Bosnia and Herzegovina
CC of BiH	Criminal Code of Bosnia and Herzegovina
CC of SFRY	Criminal Code of the Socialist Federal Republic of Yugoslavia
Const. Ct. of BiH	Constitutional Court of Bosnia and Herzegovina
CPC of BiH	Criminal Procedure Code of Bosnia and Herzegovina
Ct. of BiH	Court of Bosnia and Herzegovina
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
HVO	Croatian Defense Council
HZ H-B	Croatian Community of Herceg-Bosnia
ICC	International Criminal Court
ICTY	International Criminal Tribunal for the former Yugoslavia
ICTR	International Criminal Tribunal for Rwanda
JCE	Joint Criminal Enterprise
KP Dom	Correctional Penitentiary Institution
MUP	Ministry of the Interior
RBiH	Republic of Bosnia and Herzegovina
SFRY	Socialist Federal Republic of Yugoslavia
SRBiH	Socialist Republic of Bosnia and Herzegovina
TO	Territorial Defense